Affirmed
no
opinion

Judge Davis
Submitted

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~475~~ 257

LEWIS M. STARR, APPELLANT,

vs.

JOHN R. LAMB, EMMA S. LAMB; IDA SQUIRES AND HER GUARDIAN, W. E. COOPER; JAMES P. O. LOWNESDALE, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON.

FILED JANUARY 10, 1871.

Dec. 1871

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a DISTRICT OF OREGON, *ss:*

In obedience to instructions duly received I have served the within and annexed citation upon the within-named Millard O. Lownsdale, by exhibiting the same to him, and by delivering to him personally a true copy thereof, prepared and certified by Thomas G. Young, U. S. marshal for said district, at the city of Salem, in said district, on the 8th day of August, A. D. 1870.

W'M S. BARKER,
Deputy U. S. Marshal for said District.

DISTRICT OF OREGON, *ss:*

In obedience to instructions duly received I have served the within and annexed citation upon the within-named John R. Lamb, Emma S. Lamb, his wife, and Ida Squires, by exhibiting the original and by delivering a true copy thereof to their attorneys of record, Hill & Mulkey, and W. W. Page, severally and personally, on the 25th day of April, A. D. 1870, and by leaving at the office of the clerk of the United States circuit court for the district of Oregon, a true copy thereof for each of the said appellees, John R. Lamb, Emma S. Lamb, his wife, and Ida Squires, on the 30th day of July, A. D. 1870; and I have duly served the said citation upon James P. O. Lownsdale, James P. O. Lownsdale, guardian of Millard O. Lownsdale, Ruth A. Lownsdale, (simple,) and John A. Blanchard, guardian of Ruth A. Lownsdale, by exhibiting to them the original, and by delivering to them, severally and personally, a true copy thereof, on the 4th day of August, A. D. 1870; and

b I have duly served the said citation upon William E. Cooper, guardian of Ida Squires, by exhibiting to him the original, and by delivering to him personally a true copy thereof, on the 5th day of August, A. D. 1870; and I have duly served the said citation upon Hannah Smith, for herself, and Hannah Smith, as administratrix of Hiram Smith, deceased, by exhibiting to her the original, and by delivering to her personally a true copy thereof, on the 12th day of August, A. D. 1870. All at Portland, in said district, on the days above stated.

THOMAS G. YOUNG,
United States Marshal for the District of Oregon.

c UNITED STATES OF AMERICA, *ss:*

To John R. Lamb, Emma S. Lamb, his wife, Ida Squires and her guardian William E. Cooper, James P. O. Lownesdale, Millard O. Lownesdale and his guardian the said James P. O. Lownesdale, Ruth A. Lownesdale and her guardian John A. Blanchard, and Hannah Smith, wife and administratrix of Hiram Smith, deceased.

You are hereby cited and admonished to appear at a Supreme Court of the United States to be held at the city of Washington, in the District of Columbia, on the first Monday of December next, pursuant to an appeal allowed by the circuit of the United States for the district of Oregon, and filed in the clerk's office of the said circuit court, wherein Lewis M. Starr is appellant and you are appellees, to show cause, if any you can, why the decree in the said appeal mentioned should not be reversed and corrected, and speedy justice should not done to the parties in that behalf.

d Witness the Hon. Salmon P. Chase, Chief Justice of the Su-

preme Court of the United States this 29 day of March, A. D. 1870.

MATTHEW P. DEADY,
U. S. District Judge, Oregon.

(Indorsed:) In the U. S. Supreme Court. L. M. Starr, appellant, vs. John R. Lamb et al., appellees. Citation. Chapman, atto.

1 Be it remembered that, on the 26th day of December, A. D. 1867, there was filed in the office of the clerk of the circuit court of the United States for the district of Oregon a bill of complaint in the words and figures following, that is to say:

In the circuit court of the United for the district of Oregon.

JOHN R. LAMB, EMMA S. LAMB, HIS WIFE, AND Ida Squires, complainants,
vs.
LEWIS M. STARR, JAMES P. O. LOWNSDALE, Millard O. Lownsdale, by his guardian James P. O. Lownsdale, Ruth A. Lownsdale, by John Blanchard, her guardian, Mary E. Cooper, Hiram and Hannah Smith, defendants. } Bill of complaint.

To the honorable the judge of the court aforesaid:

John R. Lamb, Emma S. Lamb, and Ida Squires, complainants, bring this their suit against the defendants above named, and show to the court that they are citizens of the State of Kentucky, and that the defendants are citizens of the State of Oregon, and that the matters in dispute in this suit exceed the sum of five hundred dollars, exclusive of costs.

That Emma S. Lamb is intermarried with John R. Lamb, and that Emma S. Lamb and Ida Squires are the sole surviving daughters and heirs of Sarah Squires, deceased, who was the daughter of Daniel H. Lownsdale, deceased.

2 That Daniel H. Lownsdale, on the 10th day of July, 1850, intermarried with Nancy Gillihan, widow of William Gillihan, deceased.

That Daniel H. Lownsdale, on the said 10th day of July, 1850, had, by a former wife, three children, James P. O. Lownsdale, Mary E. Cooper, and Sarah Squires, now deceased.

That Daniel H. Lownsdale had, by his wife, Nancy Lownsdale, (Widow Gillihan,) two children, Millard O. Lownsdale, who is a minor, and has for his guardian James P. O. Lownsdale, and Ruth A. Lownsdale, a minor, who has for her guardian John Blanchard.

That said Nancy Lownsdale, at the time of her said marriage with Daniel H., was the mother of three children, two of whom, to wit, William Gillihan and Isabella Ellen Gillihan survived; that said Isabella Ellen afterward intermarried with one William Potter.

That said Daniel H. Lownsdale departed this life on the 4th day of May, 1862, intestate, leaving as his sole surviving heirs-at-law the complainants, Emma S. Lamb and Ida Squires, and the defendants herein, James P. O. Lownsdale, Mary E. Cooper, Millard O. Lownsdale, and Ruth A. Lownsdale; that the said Nancy Lownsdale died on the 15th day of April, 1854, leaving as her sole surviving heirs-at-law the said

Daniel H. Lownsdale, William Gillihan, Isabella Ellen Gillihan, Millard O. Lownsdale, and Ruth A. Lownsdale.

That said Nancy Lownsdale died seized of an estate in fee, in
3 and to the west half of donation claims No. 40 and 66, situate in the county of Multnomah, State of Oregon, and now within the limits of the city of Portland; that said west half of said donation claims contains about 90 acres of land, and includes what is commonly known as block number two hundred and eighteen, (218,) in said city, and which said west half of said donation claims were set apart to, and patented to, the said Nancy Lownsdale, to have and to hold to her and her heirs, by the proper officers of the Land Office of the United States, and is commonly known as the Nancy Lownsdale tract; that, upon the death of said Nancy Lownsdale, her said heirs at law, each became seized and entitled in fee to an undivided one-fifth of the whole of said Nancy Lownsdale tract, including the said block number 218.

That, on or about the day of January, 1860, the said William Potter and Isabella Ellen, by deed, conveyed the interest of the said Isabella Ellen in the estate of her mother, Nancy Lownsdale, to the said Daniel H. Lownsdale, now deceased.

Complainants would further show that, on the 1st of April, 1858, Daniel H. Lownsdale made, executed, and delivered to Lansing Stout a deed of all his interest in and to the said block 218, which deed was a deed of quit-claim and without covenants, as will more fully appear by reference to Exhibit "A," hereto annexed, and made part hereof, being a copy of said deed, and which said deed was made in trust for the use and benefit of the grantor, Daniel H. Lownsdale, and of which said trust the assigns of said Lansing Stout well knew; that said defendant claims right in said block 218, and deraigns title therein through the said Lansing Stout.

Complainants further show to the court that the said heirs of
4 Daniel H. Lownsdale, being tenants in common with the said William Gillihan and heirs of Nancy Lownsdale in the whole of said tract as patented to said Nancy, including block 218, the said William Gillihan, by his guardian, Martin Gillihan, brought his suit in the circuit court of the State of Oregon, for the county of Multnomah, for the partition of the Nancy Lownsdale tract, and in which suit said William Gillihan was plaintiff, and the parties to this suit and divers other persons were defendants; and in said suit, by the judgment and decree of said court duly rendered and given, it was, on the 22nd day of May, 1865, among other things, decreed that the said Lownsdale and his heirs were the owners in fee of two undivided one-fifths of the whole of said tract of Nancy Lownsdale, including block number 218, and that said William Gillihan, Ruth A. Lownsdale, and Millard O. Lownsdale were each entitled to an undivided one-fifth of the whole of said Nancy Lownsdale tract in fee, as will more fully appear by said decree, a copy of which is annexed, marked "B," and made a part hereof; that, thereafter, on the 12th day of August, 1865, the said court, in said suit, by its decree in said suit, wherein said William Gillihan was plaintiff, duly rendered and given, set apart and allotted to the said William Gillihan, Millard O. Lownsdale, and Ruth A. Lownsdale, as heirs of Nancy Lownsdale, certain portions of said Nancy Lownsdale tract, to be by them held in severalty, and also thereby set apart and allotted to the heirs, vendees, or claimants under D. H. Lownsdale, according to their respective interests, all of the said tract, including block 218, not so allotted to said other heirs of Nancy Lownsdale; and that, by

5 reason of the said partition not being equal, it was adjudged and decreed that the said William Gillihan, Millard O. and Ruth A. Lownsdale should have a lien upon said tracts so set apart to the heirs of Daniel H. Lownsdale to the amount of thirty-nine thousand one hundred and fifty-six $\frac{02}{100}$ dollars, and that said amount should be apportioned among the several parcels claimed by the defendants; and that the amount of $1,533 45 was adjudged a lien upon said block 218, as will more fully appear by reference to said decree, a copy of which is hereto annexed, marked Exhibit "C," and made a part hereof.

That, by reason of said D. H. Lownsdale being an heir to the estate of said Nancy Lownsdale, and by reason of said purchase of said Isabella Ellen Potter and the trust aforesaid, the said heirs of said D. H. Lownsdale became the owners in fee and entitled to two (2) undivided fifths of the whole of said Nancy Lownsdale tract, including block number 218; that, by reason of the said decree in partition, the said heirs became owners in fee of the said other three-fifths of said block 218, by purchase, subject to the lien apportioned and decreed against the same aforesaid, which said lien, as complainants are informed and believe, was paid by the said L. M. Starr and the said heirs of Daniel H. Lownsdale; that the said heirs of Daniel H. Lownsdale are tenants in common in said block 218, and are in possession of the same.

That said Hiram & Hannah Smith claim some right to said block, but as to whether or not they have any right or title therein, these complainants have no knowledge or information sufficient to form a belief.

6 Complainants would further show that their interest in said block is an undivided one-fifth thereof, subject to the claims and interest, if any there be, of the said L. M. Starr and Hiram & Hannah Smith as aforesaid, and that their interest in said block exceeds in value the sum of five hundred dollars, exclusive of costs, and that they know of no other person or persons claiming any right or interest in the premises other than as hereinbefore set forth.

Complainants would further show that the said other heirs of Daniel H. Lownsdale are likewise entitled to an undivided one-fifth of the said block 218 each.

Wherefore complainants pray that the said block be partitioned among the tenants in common thereof as aforesaid, and that their undivided one-fifth thereof be allotted and set apart to them in severalty, and that the said lien be apportioned among the parties to this suit according to their respective interests in said block, and for such other and further relief as is meet in equity and good conscience.

(S'd) W. W. PAGE,
Solicitor for Complainants.

UNITED STATES OF AMERICA,
District of Oregon, ss:

I, W'm E. Cooper, being sworn, say that the complainants in the above-entitled suit are not within this district, and that I am the agent and att'y-in-fact of the said complainants, and that the foregoing bill of complaint is true, as I verily believe.

(S'd) W. E. COOPER.

7 Subscribed & sworn to before me this 26th day of December, 1867.

(S'd) R. WILCOX, *Clerk.*

(Copy.)

"A."

Know all men by these presents that I, Daniel H. Lownsdale, of the city of Portland, Territory of Oregon, for the consideration of three thousand eight hundred dollars, to me in hand paid, the receipt whereof is hereby acknowledged, have bargained and sold and quit-claimed, and by these presents do bargain sell, release, convey and quit-claim unto Lansing Stout, his heirs and assigns, all my right, title, interest, claim, and demand, both at law and in equity, to all those blocks, pieces, or parcels of land situate in the city of Portland, and Territory aforesaid, and known on the plat of said city as blocks numbered one hundred thirty-two, (132;) block numbered one hundred and seventy-two, (172;) block numbered two hundred and eleven, (211,) of the recorded plat of the town of Portland, and also blocks within the town site and extension of the plat numbered two hundred and eighteen, (218,) and block of said extension numbered two hundred and fifty-five, (255,) containing eight lots, each measuring fifty by one hundred feet each, together with all and singular the appurtenances thereunto belonging; and by these presents give them peaceable possession of the same, to have and to hold to their own use and benefit forever.

In testimony whereof I have hereunto set my hand and seal this first day of April, one thousand eight hundred and fifty-eight

8 DANIEL H. LOWNSDALE. [SEAL.]

In presence of—
ROBERT T. SHERMAN.
W'M DOUTHIT.

TERRITORY OF OREGON, *Multnomah County, ss:*

Be it remembered that, on the 17th day of April, 1858, personally came before me, the undersigned justice of the peace in and for said county, Daniel H. Lownsdale, and to me known to be the person described in and who executed the within conveyance, and acknowledged to me that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

In testimony whereof I have hereunto set my hand the day and year first above written.

WILLIAM BECK,
Justice of the Peace.

Received for record October 20, 1858.

D. W. LICHTENTHALER,
Auditor & Recorder.

TEE STATE OF OREGON, *Multnomah County, ss:*

I, H. C. Coulson, clerk in and for said county & State, do hereby certify that the foregoing copy of deed has been by me compared with the record of original deed, and that it is a correct transcript

9 therefrom, and of the whole of such original, as the same appears of record at my office, and in my custody, as recorded on page 780, book "A" of record of deeds of said county.

In testimony whereof I have hereunto sit my hand and affixed the seal of said court, this 18th day af April, A. D. 1865.

[COUNTY COURT SEAL.] H. C. COULSON, *Clerk.*

[5-c. rev. stamp, cancelled.]

Exhibit "B" made part of complaint.

W. H. PAGE.

Special term. Sixth day.

MONDAY MORNING, *ten o'clock*, *May* 22, 1865.

Court met pursuant to adjournme't—

Present the same officers as on the 12th day of May, 1865.

Journals of the *the* proceedings of that day read and signed by the judge.

MARTIN GILLIHAN, GUARDIAN OF WILLIAM Gillihan,
vs.
S. N. ARRIGONI, H. W. CORBETT, ET AL.

At this day comes the parties, by their respective atty's, as heretofore, and the court having heard counsel upon the exceptions to the report of the referee heretofore appointed to appraise the property in dispute, for the information of the court, overrules said exceptions; to which ruling of the court the defendants, filing objections, except.

And it appearing to the court, from the pleadings and the proofs, and the report of the referees aforesaid, that the land claim in controversy cannot be partitioned equally between the heirs and representatives of Nancy Lownsdale, deceased, without prejudice to the
10 rights and interests of those claiming under Daniel H. Lownsdale, and that Daniel H. Lownsdale, in his lifetime, as heir of the said Nancy Lownsdale, and as the vendee of Isabella Ellen Potter, another heir of said Nancy, was entitled to two-fifths of all the land in controversy, and the plaintiff, William Gillihan, to one-fifth, and Ruth A. Lownsdale and Millard O. Lownsdale to one-fifth each, as heirs of said Nancy.

It is therefore ordered, adjudged, and decreed by the court, that the said tract of land described in the complaint as the land-claim of said Nancy Lownsdale, and heretofore appraised by the referees, be partitioned and allotted to the respective representatives of the said Nancy in manner following, that is to say: That the tract described as Park Avenue, being a piece one hundred and fifty f't wide, and extending across the entire claim, the parcel designated as the north half of block No. 253, being two hundred and eighty feet long and one hundred and thirty feet wide, and the whole of said land-claim lying west of parcels designated "g," "h," & "j," be, and the same are, assigned to Ruth A., Millard O. Lownsdale, & William Gillihan, minor heirs of Nancy Lownsdale, and that said parcels be partitioned equally between said Ruth A. Lownsdale, Millard O. Lownsdale, and William Gillihan, and allotted to them in equal portitions, quality and quantity relatively considered; one-third in value to be awarded to each, and that all the residue of said land-claim be assigned to the representatives of Daniel H. Lownsdale, (claiming as his heirs or vendees.)

And it appearing that compensation is due from the representatives of Daniel H. Lownsdale to the minor children above-named, on account of the inequality of partition, and that some of the parcels desig-
11 nated on the maps exhibited by numbers have been subdivided, and are claimed by the respective defendants in severalty:

It is further ordered that the amount of compensation justly due from all the claimants under Daniel H. Lownsdale, be estimated and ascer-

tained, and such total amount be equitably distributed and apportioned among the several lots and subdivisions so claimed by the defendants respectively.

It is further ordered that H. C. Leonard, J. C. Ainsworth, and George H. Belden, esq'rs., the referees heretofore appointed in this cause, be and they are appointed referees to make final partition, and estimate of compensation under this decree; and the said referees after being sworn are directed to divide the property above assigned to said Ruth A., Millard O. Lownsdale, & William Gillihan, equally between them, and to allot to each his or her several portion thereof, quantity and quality relatively considered, designating the several portions by proper landmarks, making or causing to be made all necessary surveys; and the said referees are directed to report their proceedings, specifying the manner of executing their trust, and describing the property allotted to each party.

It is further ordered that said referees estimate and determine the amount of compensation herein provided for, and report in detail the amount that should be justly charged upon all the property assigned to the representatives of Daniel H. Lownsdale, and the amounts charg'able upon the several parcels occupied or claimed by the defendants, stating the ratio of such amount to the whole value of the parcel upon which it is charged, and that this estimate be made upon view, and upon the principles specified in the former decree, under which report has been filed;
12 the former appraisment, however, not be binding if the referees see cause to change the same. The referees are further directed to decide all questions of value upon view, and upon the pleadings and proofs filed in this cause, and report herein within thirty days, if practicable. The defendants, by W. W. Chapman, att'y, except to this decree, & to that part especially which confirms the referees to a view and to the papers in this case, and excludes further testimony and a hearing of the parties before the referees; and the other defendants except generally, and all have leave to file specifications.

(Signed) ERASMUS D. SHATTUCK. *Judge.*

STATE OF OREGON, *Multnomah County, ss:*

I, H. C. Coulson, clerk of the circuit court of the State of Oregon for said county, do hereby certify that the foregoing copy of decree has been by me compared with the original, and that it is a correct copy of the whole of such original, as the same appears of record at my office, and in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, this 11th day of December, A. D. 1867.

[CIRCUIT COURT SEAL.] H. C. COULSON, *Clerk.*

Exhibit "C," made part of complaint.

This cause having been heard upon the exceptions to the report
13 of the referees heretofore filed, the respective parties appearing by their attorneys as heretofore, and the court having heard further proofs, and the argument of counsel respecting the compensation justly due to the heirs of Nancy Lownsdale, on account of inequality of partition, and duly considered the matter finds that said report should be in part set aside and modified, that is to say, in this: the compensation allowed to the heirs aforesaid should be reduced ten per cent. upon the legal tender estimate reported, and instead of the sum of forty-three thousand five hundred and six & $\frac{68}{100}$ as fixed by said referees, there should be only thirty-nine thousand one hundred and fifty-six &

$\frac{02}{100}$ dollars in United States legal tender notes, which last-named sum is allowed for compensation as aforesaid; and a like deduction of ten per cent. is ordered and made in the amounts apportioned to the respective lots and parcels of land claimed by the defendants, and said report (with the amounts estimated in legal tender notes so reduced) in this and in all other respects ought to be and is hereby confirmed.

It is therefore, ordered, adjudged, and decreed that the partition made by said referees be effectual, firm, and binding and conclusive, except as in this decree provided, that is to say:

That there should be, and is, allotted and assigned to Millard O. Lownsdale, as one of the heirs of Nancy Lownsdale, all that part of Park Avenue south of the center of the extension of Yamhill street and extending to the south line of the tract described in the complaint as Nancy Lownsdale's donation claim, and between the center lines of East & West Park street according to the plat filed with the pleading. Also,

14 all the parcels of land described and designated on the said plat as blocks "K" & "L," and the north forty-five (45) feet of lot one (1) in block two hundred and fifty-three (253.)

To Ruth A. Lownsdale, that part of Park avenue north of the center line of Washington street and between the center lines of East and West Park streets to the south line of Benjamin Stark's claim, and that part of Park avenue lying between the center lines of Alder & Morrison streets and the center of East and West Park streets; also, all of those parcels of land described and designated on said plat as block "S," and block No. one, (1,) all of lots seven (7) and eight (8) in block No. two hundred and fifty-three, (253,) and that part of the lot containing $\frac{27}{100}$ acres lying south of the center of Yamhill street extended, and lying west of block No. one (1.)

To William Gillihan, that part of Park avenue between the center of Washington and Alder and the centers of East & West Park streets, and that part of Park avenue lying between the centers of Morrison and Yamhill streets and centers of East & West Park streets; also, all of block "T," all of block No. two, (2,) and five feet of south side of lot No. one, (1,) in block No. two hundred and fifty-three, (253,) all that part of lot containing $\frac{27}{100}$ acres north of the center line of Yamhill street, and all north of parcels "I" and No. two. (2.)

To the heirs and vendees or claimants under Daniel H. Lownsdale, according to their respective interests all of said tract not above mentioned and allotted to the said Millard O., Ruth A., and William, heirs of said Nancy.

And it appearing that said partition is unequal, and that said heirs of Nancy Lownsdale, are entitled to compensation, which has been

15 assessed as aforesaid, it is ordered, adjudged, and decreed that the said Millard O., Ruth A., and William do jointly have a lien upon said tracts and parcels of land, allotted to those claiming under said Daniel H. Lownsdale, as aforesaid, for the said amount of compensation, to wit: the sum of thirty-nine thousand one hundred and fifty-six $\frac{02}{100}$ dollars (39,156 02) in United States legal tender notes, and that said sum be, and it is, apportioned among the several parcels claimed by the defendants and is charged upon the respective lots or parcels, as follows, to wit:

Block 209, lots 1, 2. Atella, wife of Francis De Witt, (fractional,) one hundred & twenty-three & $\frac{23}{100}$ dollars $123 23

"	209, lots 3 & 4. Walter Moffatt, (fractional,) one hundred & nine & $\frac{54}{100}$ dollars	109 54
"	209, lots 5 & 6. G. W. Walling, the sum of four hundred & fifty-eight & $\frac{67}{100}$ dollars	458 67
"	209, lot 7. Samuel Scott, the sum of two hundred & fifteen & $\frac{63}{100}$ dollars	215 63
"	209, lot 8. C. Hay & others, the sum of two hundred & forty-three & $\frac{01}{100}$ dollars	243 01
"	210, lots 1, 2, 7, & 8. H. W. Corbett, the sum of six hundred & two & $\frac{42}{100}$ dollars	602 42
"	210, lots 3, 4, 5, & 6. Addison C. Gibbs, the sum of six hundred & two & $\frac{42}{100}$ dollars	602 42
"	211. A. C. Gibbs & others, the sum of twelve hundred & four & $\frac{85}{100}$ dollars	1,204 85
"	212, lots 1 & 8. M. P. Deady, the sum of three hundred & forty-nine & $\frac{13}{100}$ dollars	349 13
"	212, lots 2 & 7. C. O. Clark, the sum of three hun-	
16	dred & fifty-three & $\frac{56}{100}$ dollars	$353 56
Block	212, lots 3, 4, 5, & 6. J. S. & O. B. Risley, the sum of five hundred & ninety-two & $\frac{16}{100}$ dollars	592 16
"	213. Thomas F. Scott, the sum of one thousand & ninety-five & $\frac{31}{100}$ dollars	1,095 31
"	214. Genevieve G. H. Brooke, wife of L. Brooke, the sum of twelve hundred & four & $\frac{84}{100}$ dollars	1,204 84
"	215. Henry L. Pittock, the sum of sixteen hundred & forty-two & $\frac{98}{100}$ dollars	1,642 98
"	216. Levi Estes & D. S. Stinson, the sum of sixteen hundred & forty-two & $\frac{98}{100}$ dollars	1,642 98
"	217. Sylvester & Mary Ann Pennoyer, the sum of sixteen hundred & forty-two & $\frac{98}{100}$ dollars	1,642 98
"	218. A. M. & L. M. Starr & others, the sum of fifteen hundred & thirty-three & $\frac{45}{100}$ dollars	1,533 45
"	219. James B. & Sarah E. Harker, the sum of sixteen hundred & forty-two $\frac{98}{100}$ dollars	1,642 98
"	220, lots 1, 2, 7, & 8. O. B. & A. B. Gibson, the sum of seven hundred & ninety-four & $\frac{11}{100}$ dollars	794 11
"	220. lots 3, 4, 5, & 6. Francis M. & Elizabeth D. Warren, seven hundred & ninety-four & $\frac{11}{100}$ dollars	794 11
"	249. S. N. Arrigoni & wife, thirteen hundred & sixty-nine & $\frac{15}{100}$ dollars	1,369 15
"	250. Alexander & Christaina E. Hamilton, fourteen hundred & twenty-three & $\frac{91}{100}$ dollars	1,423 91
"	251. W. A. Abbett, the sum of thirteen hundred & fourteen & $\frac{39}{100}$ dollars	1,314 39
"	252. W. A. Abbett, the sum of fourteen hundred &	
17	twenty-three & $\frac{92}{100}$ dollars	$1,423 92
Block	253, lots 3, 4, 5, & 6. W. A. Abbett, the sum of seven hundred & eleven & $\frac{96}{100}$ dollars	711 96
"	254, lot 1. Jno. & Mary Hulery, the sum of two hundred & ten & $\frac{28}{100}$ dollars	210 28
"	254, lots 2, 3, & 4. Joseph & Isaac Bergman, the sum of five hundred & thirty-seven & $\frac{79}{100}$ dollars	537 79
"	254, lots 5 & 6. G. H. Triboo & others, the sum of three hundred & fifty-five & $\frac{90}{100}$ dollars	355 90

"	254, lots 7 & 8. A. M. & L. M. Starr & others, the sum of three hundred & thirty-seven & $\frac{90}{100}$ dollars	337 90
"	255. Lansing Stout, the sum of twelve hundred & four & $\frac{85}{100}$ dollars	1,204 85
"	256, lots 1, 2, 3. Jacob Goyette, the sum of four hundred & seventy-five & $\frac{37}{100}$ dollars	475 37
"	256, lot 4. Vincent Rand, the sum of one hundred & eighty-six & $\frac{19}{100}$ dollars	186 19
"	256, lot 5. O. B. Risley & E. W. Fine, one hundred & sixty-eight & $\frac{12}{100}$ dollars	168 12
"	256, lots 6, 7, & 8. George Taylor, the sum of four hundred & twenty-nine & $\frac{91}{100}$ dollars	429 91
"	257, lots 1, 2, 7, 8. A. E. Wait & J. K. Kelly, the sum of six hundred & twenty-nine & $\frac{81}{100}$ dollars.	629 81
"	257, lots 3, 4, 5, 6. S. Norris, the sum of six hundred & twenty-nine & $\frac{81}{100}$ dollars	629 81
"	258. Isaac B. Smith, the sum of twelve hundred & fifty-nine & $\frac{61}{100}$ dollars	1,259 61
"	259, lots 1, 2. Charles & Mary Warren & others, the sum of three hundred & eighty-three & $\frac{40}{100}$	
18	dollars	383 40
Block 259, lot 3. Charles & Mary Warren & others, the sum of one hundred & sixty-four & $\frac{29}{100}$ dollars		164 29
"	259, lot 4. Cha's & Mary Warren & others, the sum of one hundred & sixty-four & $\frac{29}{100}$ dollars	164 29
"	259, lots 5, 6, 7, 8. Cha's & Mary Warren & others, the sum of five hundred & forty-seven & $\frac{63}{100}$ dollars	547 63
"	260. W'm Cree, adm'r of est. of Robert Thompson, dec., one thousand & ninety-five & $\frac{31}{100}$ dollars	1,095 31
"	"G," south half. Isaac A. Davenport, (fractional,) eight hundred & seventy-six & $\frac{25}{100}$ dollars	876 25
"	"G," north half. James Fields, the sum of nine hundred & eighty-five & $\frac{79}{100}$ dollars	985 79
"	"H." Stephen Coffin, adm'r of Elijah Hill, one thousand nine hundred & seventy-one & $\frac{58}{100}$	1,971 58
"	"I." Hiram & Hannah M. Smith, one thousand nine hundred & seventy-one & $\frac{58}{100}$	1,971 58
"	"J." Hiram & Hannah M. Smith, the sum of fourteen hundred & seventy-eight & $\frac{67}{100}$ dollars	1,478 67
Total, thirty-nine thousand one hundred & fifty-six $\frac{02}{100}$		$39,156 02

That the said sum be a lien upon the said parcels, respectively, and, if not paid by the party in possession or claiming the property, within ninety days, that execution issue requiring the sheriff to sell so much of any parcel upon which said sum is charged as aforesaid, as may be necessary to pay said amount and accruing costs.

And it appearing that there are conflicting claims between the heirs and purchasers of Daniel H. Lownsdale to portitions of the tract allotted to said heirs and purchasers, according to their respective interests, and that it is not practicable to make up and determine
19 the issues between said parties in this suit.

It is ordered, adjudged, and decreed that nothing herein and

hereby done shall prejudice any lawful claim of any of the defendants being heirs of, or claimants under, Daniel H. Lownsdale, as between themselves; nor shall this decree be any bar to any other action, suit, or proceeding between any of the defendants in this suit to settle and determine their conflicting claims; and in case any of the defendants, being in possession under a conveyance from Daniel H. Lownsdale, or claiming any parcel, as heir or vendee of said Lownsdale, shall pay the amount of the compensation hereby charged upon such parcel, and afterwards be evicted from such parcel, or any portion or share thereof, by any other defendant claiming under said Lownsdale, he shall be entitled to claim and have a lien upon such land for the reimbursement of said money and interest, or such part of it as the portion from which he is evicted is to the whole parcel.

It is further ordered and decreed that the costs and disbursements, including the fees of referees, be paid by the parties in this suit, in proportion to their respective interests, and that the same be apportioned pro rata among the claimants, according to the values fixed to their parcels by the report aforesaid; and that the same be paid or collected in like manner as the compensation above stated.

It is further ordered that the compensation be paid, one-third (⅓) to Martin Gillihan, the general guardian of William Gillihan; and one-third (⅓) to John A. Blanchard, general guardian of Ruth A. Lownsdale; and one-third (⅓) to J. P. O. Lownsdale, general guardian
20 of Millard O. Lownsdale, for the benefit of their respective wards, upon their filing each an additional bond in the sum of ten thousand dollars, conditional, as the law requires, with two or more sureties.

To the foregoing order and decree the defendants, by their respective attorneys, *accepted*.

And afterwards, to wit, on December 26th, A. D. 1867, the following subpœna ad respondendum was issued out of the office of the clerk of this court.

In the circuit court of the United States for the district of Oregon.

JOHN R. LAMB AND EMMA S. LAMB, HIS WIFE, and Ida Squires, complainants,
vs.
LEWIS M. STARR, JAMES P. O. LOWNSDALE; Millard O. Lownsdale, by his guardian, James P. O. Lownsdale; Ruth A. Lownsdale, by John A. Blanchard, her guardian; Mary E. Cooper, and Hiram & Hannah Smith, defendants.

The President of the United States of America to the said defendants above-named, greeting:

We command you, and every of you, to be and appear in the circuit court of the United States for the district of Oregon, at Portland, in said district, on Monday, the sixth day of January, next ensuing,
21 and you and each of you are then and there required to answer the bill of complaint filed against you, and each of you, by John R. Lamb, Emma S. Lamb, and Ida Squires, in a suit in equity. And you, the marshal of said district, or your deputy, shall make due service of this writ of subpœna, and have you then and there the same.

Witness the Hon. Salmon P. Chase, Chief Justice of the Supreme

Court of the United States, and the seal of our said circuit court hereto affixed this 26th day of December, 1867.
[U. S. CIRCUIT COURT SEAL.] R. WILCOX, *Clerk.*

The defendants are to enter their appearance in the clerk's office on or before the first Monday of January next; otherwise the bill of complaint may be taken pro confesso.

DISTRICT OF OREGON, *ss:*

In obedience to the command of the within writ, I have served the same by delivering to the within-named Lewis M. Starr, James P. O. Lownsdale, John A. Blanchard, Mary E. Cooper, and Hiram & Hannah Smith, a copy of the within subpœna, also a copy of the complaint to James P. O. Lownsdale, in Multnomah County, in said district, on this 26th day of December, A. D. 1867.

AL. ZIEBER,
U. S. Marshal for Oregon.

Dec. 27th, 1867.

22 Service, 6 persons, $24 00; mileage, 72—$24 72.

(Endorsed:) "Returned & filed Dec. 27, 1867. R. Wilcox, clerk."

And afterwards, to wit, on January 6th, A. D. 1868, the following demurrer was filed with the clerk of this court.

In the circuit court of the United States for the district of Oregon.

JOHN R. LAMB AND EMMA LAMB, AND IDA Squires, complainants,
vs.
LEWIS M. STARR, JAMES P. O. LOWNSDALE, and others, defendants.
} Bill in equity.

And now comes the said defendant, L. M. Starr, by W. W. Chapman, his solicitor, and demurs to the complainants' bill, and sets down and shows to the court the following causes of demurrer:

1. The complainant, in his said bill, does not set forth the trust upon which said Lownsdale's interest was conveyed to said Stout.
2. The complainants' bill does not state what the interest of said Daniel H. Lownsdale was when conveyed upon trust.
3. Hiram & Hannah Smith are improperly joined with this defendant.

W. W. CHAPMAN, *Sol.*

23 I, W. W. Chapman, counsel for defendant, certify that, in my opinion, this demurrer is well founded in point of law.

W. W. CHAPMAN, *Sol.*

United States district court for Oregon.

I, L. M. Starr, defendant in the above case, do swear that the foregoing demurrer is not interposed for delay.

LEWIS M. STARR.

Subscribed & sworn to before me this 6th day of January, 1867.
R. WILCOX, *Clerk.*

(Endorsed:) Filed Jan. 6th, 1867. R. Wilcox, clerk.

And afterwards, to wit, on the 6th day of January, 1868, the following special pleas *was* filed with the clerk of this court:

In the circuit court of the United States for the district of Oregon.

JOHN R. LAMB AND EMMA LAMB, AND IDA Squires, complainants, *vs.* LEWIS M. STARR & OTHERS, DEFENDANTS. } Bill in equity.

To the hon. the judge of said court:

24 And now comes the said defendant L. M. Starr, by W. W. Chapman, his solicitor, and for plea says that, on the 1st day of April, 1858, the day on which the said Daniel H. Lownsdale executed and delivered to the said Lansing Stout the deed for the premises in the complainants' bill mentioned, the said Daniel was in the sole and exclusive possession of said premises, and delivered the same to the said Lansing Stout, through whom this defendant deraigns title, and that on the day of December, 1867, at the time of the commencement of this suit, the complainants were not in the possession of said premises, but this defendant was in the sole and exclusive possession thereof, this defendant is ready to verify. Wherefore this defendant prays judgement, &c.

And this defendant, for a further plea in this behalf by him pleaded, by leave of the court first had and obtained, says that the said Nancy Lownsdale did not die seized in fee in and to the west half of donation claims, No. 40 & 66, situated in the county of Multnomah, in Oregon, including block 218, but that the said William Gillihan and said Nancy, his wife, the father and mother of the said William, jr., and Isabella Ellen, in the year 1847, under the provisional government of Oregon, took up and settled upon a certain tract of the public lands of the United States, containing 640 acres, situated upon Sauvie's Island, upon what is now known as Multnomah County, and continued personally to reside upon and cultivate the said land from the time of their said settlement until the death of the said William Gillihan, some time in the year 1850, having done and performed all things as required under and by the act of the 27th September, 1850, making donation to settlers so as to
25 entitle them to the benefits of said act in respect to said land, whereby the same vested in the said Nancy Gillihan and the heirs at law of the said William Gillihan, and thereby disqualified the said Nancy to become seized of any part of the donation claim of the said Daniel H. Lownsdale; and this defendant is ready to verify. Wherefore the defendant prays judgement, &c.

And this defendant, for a further plea by leave, &c., says that the said William Gillihan and Isabella Ellen Gillihan were not the children and heirs of Nancy Lownsdale, to whom the Nancy Lownsdale tract was patented, and did not, in virtue of the said patent referred to by complainant, become seized of any part of the donation claim of the said Nancy Lownsdale, wife of the said Daniel H. Lownsdale; and this defendant is ready to verify. Wherefore the defendant prays judgement, &c.

W. W. CHAPMAN, *Sol.*

U. S. circuit court.

L. M. Starr, being sworn, do say that the foregoing pleas are not interposed for delay, and that the said pleas are true, as I verily believe.

LEWIS M. STARR.

Subscribed & sworn to before me this Jan'y 6th, 1868.
R. WILCOX, *Clerk.*

(Endorsed:) "Filed January 6th, 1868. R. Wilcox, clerk."

26 I, W. W. Chapman, counsel for the defendant, certify that, in my opinion, the foregoing pleas are well founded in point of law.
W. W. CHAPMAN, *Sol.*

And afterwards, to wit, on January 14th, A. D. 1868, being the 8th judicial day of the January term of the circuit court for the district of Oregon, Hon. M. P. Deady, judge, among other, the following proceedings were had, that is to say:

JOHN R. LAMB ET AL. *vs.* L. M. STARR ET AL. } In equity.

Now at this day comes the complainants in the above-entitled cause, by W. W. Page and W. Lair Hill, esq's, their solicitors, and the defendant, by W. W. Chapman, esq., his solicitor, and this cause came on to be heard upon the demurrer to the bill herein; and, the court having heard the argument thereon, it is considered that said demurrer be sustained, and it is ordered that the complainants have further time to plead.

And afterwards, to wit, on January 16th, A. D. 1868, the following amendment to bill of complaint was filed with the clerk of this court:

In the circuit court of the United States for the district of Oregon.

27 JOHN R. LAMB AND EMMA S. LAMB, his wife, and Ida Squires, complainants, *vs.* LEWIS M. STARR, JAMES P. O. LOWNSDALE; Millard O. Lownsdale, by his guardian, James P. O. Lownsdale; Ruth A. Lownsdale, by her guardian, John A. Blanchard; Mary E. Cooper, Hiram & Hannah Smith, defendants.

Amendment to bill of complaint.

The complainants, by leave of the court first had, make the following amendment to the bill of complaint: Commencing at the first word of the eleventh line of the third page of said bill of complaint, and extending to the last word in the twenty-first line of said page.

Complainants would further show that, on the 1st day of April, A. D. 1858, Daniel H. Lownsdale made, executed, and delivered to Lansing Stout a deed of all his interest in and to said block two hundred and eighteen, (218,) which deed was a deed of quit-claim, and without covenants, as will more fully appear by reference to Exhibit "A," annexed to, and made a part of, the bill of complaint herein, the said Exhibit "A" being a copy of said deed; that said deed was made in trust to enable the said Lansing Stout to use whatever interest the said Daniel H. Lownsdale then had in said block in payment of debts of the said Daniel,
28 or to raise money on that said interest for the purpose of paying such debts; that, on the said 1st day of April, A. D. 1858,

the said Lansing Stout executed and delivered to Alonzo Leland a quit-claim deed of one undivided half of his interest in said block, which deed was made to Leland in trust for the said Daniel H. Lownsdale, upon the same trust above described, and was made to said Leland to enable him to assist the said Stout in performing his said trust, and paying the debts of the said Daniel H. Lownsdale; that, therefore, to wit, on the fifth day of December, A. D. 1864, the said Leland, on his own private account, and not in pursuance of said trust, deeded to the defendant, Lewis M. Starr, all his right, title, and interest in said block, designating the lots therein separately, and his wife joined in said deed; that, prior to the last-named date, to wit, on the 12th day of December, 1863, the interest of said Stout in said block was sold on an execution issued out of the circuit court of the State of Oregon for the county of Multnomah against the property of said Stout; and at said sale on execution, the said defendant Lewis M. Starr, purchased the interest so sold. That, at the time of his purchase from said Leland, and at the time of his purchase at said sale on execution, the said Starr had full notice of said trust, and well knew that said Leland and said Stout had no interest in said block, except as such trustees, and that the said sales to him were not made, nor said deeds executed in pursuance of said trust.

W. W. PAGE & W. LAIR HILL,
29 *Solicitors for Compl'ts.*

UNITED STATES OF AMERICA,
District of Oregon, ss:

I, W'm E. Cooper, being sworn, say that the complainants in the foregoing amendment to bill of complaint are not within this district, and that I am the agent and attorney-in-fact of the said complainants, and that the foregoing amendment to bill of complaint is true, as I verily believe.

W. E. COOPER.

Subscribed & sworn to before me this 16th day of January, 1868.
R. WILCOX, *Clerk.*

(Endorsed:) Filed January 16th, 1868. R. Wilcox, clerk.

And afterwards, to wit, on January 18th, A. D. 1868, being the 12th judicial day of the January term of the circuit court for the district of Oregon, Hon. M. P. Deady, judge, among other, the following proceedings were had, that is to say:

JOHN R. LAMB ET AL. } In equity.
vs.
LEWIS M. STARR ET AL. }

Now, at this day, comes the parties to the above entitled cause,
30 by their respective solicitors, as heretofore; and, upon consent of counsel, it is ordered that this cause be set down for hearing upon the special pleas to the bill herein, instanter, and the court, having heard the argument of counsel upon the same, will advise thereof.

And afterwards, to wit, on January, 18th, A. D. 1868, the following demurrer was filed with the clerk of this court.

In the circuit court of the United for the district of Oregon.

JOHN R. LAMB & EMMA S. LAMB, AND IDA Squires, complainants,
vs.
LEWIS M. STARR, DEFENDANT.
} Bill in equity.

And now comes the defendant and demurres to that part of the complainants' bill embraced in the amendment, for the following reasons:

1st. It is not alleged that the alleged trust was in writing, subscribed by the said Daniel H. Lownsdale.

2nd. That part of the complaint and amendment relating to the trust does not show that the said Leland and Stout did not apply the proceeds of sale to the payment of the debts of D. H. Lownsdale.

3rd. It does not appear by said amendment but that the
31 debts to be paid were due said Stout and Leland.

4th. The sales alleged to have been made by Stout & Leland does not appear to have been in violation of the trust of which it is alleged the defendant had notice.

5th. It does not appear that the alleged trust, reposed in Leland, was in writing, subscribed by either the said Stout or Leland. Wherefore, &c.

W. W. CHAPMAN.
Sol. for Def't.

I, W. W. Chapman, counsel for defendant, in the above-entitled suit, do certify, that, in my opinion, the foregoing demurrer is well founded in point of law.

W. W. CHAPMAN,
Sol. for Def't.

United States circuit court for the district of Oregon.

I, Lewis M. Starr, being duly sworn, do say that the foregoing demurrer is not interposed for delay.

18th January, 1868.

L. M. STARR.

Subscribed & sworn to before me this 18th day of January, 1868.
R. WILCOX, *Clerk.*

(Endorsed:) Filed Jan'y 18th, 1868. R. Wilcox, clerk.

And afterwards, to wit, on January 20th, A. D. 1868, being
32 the 13th judicial day of the January term of the circuit court for the district of Oregon, Hon. M. P. Deady, judge, among other, the following proceedings were had, that is to say:

JOHN R. LAMB ET AL.
vs.
L. M. STARR ET AL.
} In equity.

Now, at this day, comes the parties to the above-entitled cause, by their solicitors, as heretofore; and, by consent, the court having heard the argument of counsel upon the demurrer to the amended bill herein, will advise thereof.

And afterwards, to wit, on January 27th, A. D. 1868, being the 15th judicial day of the January term of the circuit court for the district of Oregon, Hon. M. P. Deady, judge, among other, the following proceedings were had, that is to say:

JOHN R. LAMB ET AL. *vs.* L. M. STARR ET AL. } In equity.

Now, at this day, comes the parties to the above-entitled cause, by their solicitors, as heretofore; and, the court having sufficiently advised in the premises, it is considered that the demurrer and *and* special pleas to the bill herein be, and the same are, overruled, and that the de-
33 fendant have until Wednesday next to plead to that part of the bill relating to the trust, or answer thereto.

And afterwards, to wit, on January 29th, the following answer was filed with the clerk of this court.

In the United States circuit court for the district of Oregon.

JOHN R. LAMB AND EMMA S. LAMB. AND IDA Squires, complainants, *vs.* LEWIS M. STARR & OTHERS, DEFENDANTS. } In equity.

The separate answer of the defendant Lewis M. Starr.

And now comes the said L. M. Starr, by W. W. Chapman, his solicitor, and, saving and reserving all manner of exceptions to the manifold errors and insufficiencies in said bill as amended, for answer thereto, or to so much thereof as he is advised is material for him to answer unto, answers and says: That, as he is informed and believes, and so charges, Daniel H. Lownsdale, on the first day of April, 1858, was the owner in fee of said block 218 in the bill mentioned, and, on that day, by deed, duly executed and acknowledged, for the consideration of $3,800, expressed therein, bargained, sold, and conveyed to Lansing Stout, in fee, said block, which said deed was absolute upon the face, and the said Daniel, being in the possession of said block at the time of said conveyance, delivered the same to the said Stout. That the said Stout, on the
34 same day, for the consideration of one thousand nine hundred dollars, bargained, sold, and conveyed, in fee, to the said Alonzo Leland, the undivided one-half of the said block, and delivered to him the possession thereof. That, on the 12th day of January, 1863, an execution issued from the clerk's office of the circuit court of Multnomah County, Oregon, upon a judgment therein recovered, wherein George H. Williams and others were plaintiffs, and the said Lansing Stout was defendant, of date the day 18 , and Robert J. Ladd, then sheriff of said county, levied the said execution upon the undivided half of lots 1, 2, 3, 4, 5, 6, 7, 8, being the entire block aforesaid, and gave due notice and caused proper advertisement of the public sale thereof, on the 14th day of February, 1863, and at such sale this defendant, being the highest and best bidder for said property, for the consideration of the sum of seven hundred and fifty dollars, become the purchaser of the said undivided one-half of said block; and the said sheriff, for the consideration aforesaid, by this defendant so paid to said sheriff and credited upon

said execution and judgment, the redemption allowed by law not having been made on the 24th day of December, 1863, executed and acknowledged and delivered to this defendant a sheriff's deed for said property in due form and effect, and upon the purchase aforesaid, this defendant entered into the possession of said purchased interest, and has ever since been, and now is, in the possession thereof. That, on the fifth day of December, 1864, for the consideration of about fifteen hundred dollars,
(the precise amount he cannot state, because the purchase of the
35 said property was included with other property,) by him paid to
the said Alonzo Leland, the said Leland bargained, sold, and conveyed in fee the undivided one half of said property to this defendant, and then and there executed and delivered to this defendant a deed in due form, and delivered to him the possession of the said undivided one-half of said block of which this defendant ever since has been, and now is, in the peaceable and quiet possession, and long before the commencement of this suit was, and ever since has been, and now is, owner in fee, and in the possession thereof, adversely to the complainants. And this defendant says that, at the time the said Daniel executed the said deed to the said Lansing Stout, he represented and professed to the said Stout that he was the owner in fee of said block, entire, and could and would receive a patent therefor from the United States. And this defendant says that he purchased the property aforesaid for a full consideration, as before stated, with no intention of injuring or defrauding any one; that this purchase, and payment of money, and reception of deeds, as aforesaid, was done and made by him in the utmost good faith; and, that if the said Stout, or Leland, or any other person, in respect to the matters set forth in the complainants' bill or this answer, acted in bad faith, or with intent to injure or defraud the said Daniel or the complainants, this defendant had no knowledge of such intent, nor had he any reason to inquire or be informed in respect thereto. And this defendant, answering specially as to the alleged trust in complainants'
bill mentioned, says that, at the time he made the said purchases,
36 respectively, and at the time he paid the purchase-money, or any
part, and every part, he had no knowledge of the alleged trust, nor any information or belief thereof, nor had he any reason to inquire and be informed of the same; but alleges and sets forth that he was and is a purchaser of said property for a full and valuable consideration, without notice of the alleged or other trust, or fraud respecting the said property. And this defendant denies that there was such alleged trusts, as set out in complainants' bill, or any trusts whatever. And this defendant, further answering, says that if there was any trust, either between the said Lownsdale and the said Stout, or the said Leland, as alleged, that the same, nor either, was in writing subscribed by the party delivering the same; and, if there was any trust in writing, that the said sales by the said Stout & Leland, and each of them, was not in violation thereof.

This defendant, further answering, says that the said Nancy Lownsdale did not die seized of an estate in fee in and to the tract of land called the west half of donation claims 40 and 66, in the county of Multnomah, as described in the complaint, and denies that upon the death of the said Nancy Lownsdale, the said alleged heirs of the said Nancy, to wit, the said Millard, Ruth, William, and Isabella Ellen, each became entitled to one undivided one-fifth of said tract, including said block.

And, further answering, this defendant says that the said William Gillihan, now deceased, and the said Nancy, his wife, in the year 1847,

settled upon a certain tract of about 640 acres of land situate upon
37 Sauvie's Island, within the present county of Multnomah; that said settlement was made early in the year 1847, and the said parties made large and valuable improvements thereon, and continuously resided thereon, and to cultivate the same from year to year until early in the year 1850, when the said William Gillihan, being a white male citizen of the United States, over the age of twenty-one years, departed this life, having, in all things, as this defendant is advised and believes, complied with the requirements of the act of Congress of the 27th Sept., 1850, commonly called the donation law, and that upon the death of the said William Gillihan, the said tract of land by said donation was declared to have been vested in the heirs at law of the said William and the said Nancy, and thus the said Nancy was thereby disqualified to hold any part of the donation claim of the said Daniel.

But, notwithstanding the said settlement and holding of said claim and death of said William Gillihan, the said Nancy could hold a part of the donation claim of said Daniel; that the said Daniel, being a white man over the age of twenty-one years, a native-born citizen of the United States, and a single man, did, on the 22nd day of September, 1848, take up and settle upon a certain tract of the public and unoccupied lands of the United States situate within the limits of the city of Portland, containing about one hundred and eighty acres, of which the said 90 acres in the bill mentioned is a part; that the said Daniel continued to
38 reside upon and cultivate the said tract from the said 22nd day of September, 1848, continuously for four years, whereby, notwithstanding the said Daniel intermarried with the said Nancy, as in the bill mentioned, he became and was invested with the title to the said tract of 180 acres, including the said block, the title to which passed to this defendant.

And this defendant, further answering, says that, in and by the said deed by the said Daniel to the said Lansing Stout, the said Daniel covenanted to and with the said Stout, the said block and the possession thereof, he, the said Stout, should peac'ably have and hold and use, and have the benefit of forever, whereby, and by force thereof, this defendant says the said complainants, as heirs at law of the said Daniel, are estopped to set up any claim or right or interest in or to said block, or to have any use or benefit thereof, either to whole or any part thereof.

And this defendant, further answering, says that he denies that the said Daniel H. Lownsdale was an heir to the estate of the said Nancy Lownsdale, and purchaser from the said Isabella Ellen, so as to vest in the heirs at law of said Daniel the undivided two-fifths of said block; and this defendant denies that, by reason of the decree in partition, the said heirs at law of the said Daniel become owner in fee of the said other $\frac{2}{5}$ of said block by purchase or otherwise, and denies that said heirs paid any part of the owelty assessed against said block; and this defendant says that by the said deed from the said Lownsdale, executed and delivered under the circumstances and representations here-
39 inbefore stated, the said Daniel conveyed not only his legal, but his equitable estate then held and thereafter acquired, whereby the said Stout and his assignees become invested under said deed with and subject to all the equities in partition, and by virtue of which and his right quietly and peac'ably to have, use, and enjoy the use and benefit of said block forever, he paid and satisfied the whole assessment aforesaid against the same, and a large amount of the costs in partition of which the complainants and other heirs at law aforesaid had notice, and made no objection.

And this defendant, further answering as to the rights of this defendant to pay and satisfy said lien and have the benefit of the equity in partition, says that, by the decree of the circuit court of Multnomah County, Oregon, rendered on the day of , 1865, in a suit in equity, wherein H. W. Corbett and others, were plaintiffs, and James P. O. Lownsdale, administrator, and the heirs of D. H. Lownsdale, deceased, were defendants, it was adjudged, ordered, and decreed, that the said adm'r and heirs should be perpetually enjoined from disposing of or incumbering the said $\frac{3}{5}$ interest, and that the right thereto vested in the vendees of the said Lownsdale, to whom any part of said tract had been assigned, and in whom under said decree any part of said tract should vest by virtue of the conveyances of the said D. H. Lownsdale, whereby and by virtue of said decree now remaining of record in said court unreversed, the said complainants are estopped to set up any claim to the equitable interest of said Daniel in said Nancy Lownsdale tract, whether by descent or by purchase.

40 This defendant, further answering, says that, as he is informed and believes, the said Hiram and Hannah Smith have no interest in said block; and this defendant says that he is informed and believes, and so charges, that, if the said Hannah & Hiram have any conveyances of any interest in said block, they are fraudulent and void.

Defendant denies that the complainants have any interest, legal or equitable, in or to said block, and denies that any of the heirs of the said Daniel, now have any interest in the said block, legal or equitable, or can lawfully disquiet this defendant in the use, benefit, and enjoyment thereof.

Therefore, this defendant prays to be hence dismissed with*s* his costs and disbursements.

W. W. CHAPMAN,
Sol. for Def't.

Circuit court of the United State for the district of Oregon.

I, L. M. Starr, being duly sworn, do say that the statements in the foregoing answer are true, as he verily believes.

L. M. STARR.

Subscribed & sworn to before me this 29th day January, 1868.
R. WILCOX, *Clerk.*

(Endorsed:) "Filed January 29, 1868. R. Wilcox, clerk."

41 And afterwards, to wit, on February 3rd, A. D. 1868, the following exceptions to answer of Lewis M. Starr *was* filed with the clerk of this court.

In the circuit court of the United States for the district of Oregon.

JOHN R. LAMB & EMMA S. LAMB, AND Ida Squires, complainants,
vs.
LEWIS M. STARR & OTHERS, DEFENDANTS.

Now comes the complainants, by W. W. Page and W. Lair Hill, solicitors, and except to the following specified parts of the separate answer of the defendant Lewis M. Starr, that is to say:

First. Commencing with the word "that," in the 23rd line of the 1st page of said answer, and extending to and including the word "Stout," in the 7th line of the 2nd page thereof.

Second. Commencing with the word "that," in the 7th line of the 2nd page of said answer, and extending to and including the word "thereof," in the 14th line of the 2nd page thereof.

Third. Commencing with the word "that," in the 15th line of the 2nd page of said answer, and extending to and including the word "thereof," in the 20th line of the 3rd page thereof.

Fourth. Commencing with the word "that," in the 20th line of the 3rd page of said answer, and extending to and including the word "complainants," in the 13th line of the 4th page thereof.

42 Fifth. Commencing with the word "and," in the 13th line of the 4th page of said answer, and extending to and including the word "thereto," in the 10th line of the 5th page thereof.

Sixth. Commencing with the word "this," in the 11th line of the 6th page of said answer, and extending to and including the word "block," in the 26th line of the 6th page thereof.

Seventh. Commencing with the word "and," in the 27th line of the 6th page of said answer, and extending to and including the word "Daniel," in the 2nd line of the 8th page thereof.

Eighth. Commencing with the word "but," in the 3rd line of the 8th page of said answer, and extending to and including the word "defendant," in the third line of the the 9th page thereof.

Ninth. Commencing with the word "and," in the 3rd line of the 9th page of said answer, and extending to and including the word "thereof," in 19th line of the 9th page thereof.

Tenth. Commencing with the word "and," in the 20th line of the 9th page of said answer, and extending to and including the word "block," in the 27th line of the 9th page thereof.

Eleventh. Commencing with the word "and," in the 28th line of the 9th page of said answer, and extending to and including the word "block," in the 6th line of the 10 page thereof.

43 Twelfth. Commencing with the word "and," in the 7th line of the 10th page of said answer, and extending to and including the word "objection," in the 27th line of the 10th page thereof.

Thirteenth. Commencing with word "and," in the 28th line of the 10th page of said answer, and extending to including the word "purchase," in the 28th line of the 11th page thereof.

Fourteenth. Commencing with the words "defendant," in the 11th line of the 12th page of said answer, and extending to and including the word "thereof," in the 18th line of the 12th page thereof.

And for cause of exception, complainants say that each and every of the parts so specified and excepted to are insufficient in law or equity to constitute a defence to complainants' bill.

W. W. PAGE & W. LAIR HILL,
Solicitors for Complainants.

(Endorsed:) "Filed Feb'y 3rd, 1868. R. Wilcox, clerk."

And afterwards, to wit, on February 4th, A. D. 1868, being the 19th judicial day of the January term of the circuit court for the district of Oregon, Hon. M. P. Deady, judge, among other, the following proceedings were had, that is to say:

JOHN R. LAMB ET AL. } In equity.
vs.
L. M. STARR ET AL. }

44 Now, at this day, in this cause, it is ordered that the same be set down for hearing upon the exceptions to the answer herein on Saturday ensuing next.

And afterwards, to wit, on February 8th, A. D. 1868, being the 20th judicial day of the January term of the circuit court for the district of Oregon, Hon. M. P. Deady, judge, among other, the following proceedings were had, that is to say:

JOHN R. LAMB ET AL. } In equity.
vs.
L. M. STARR ET AL. }

Now, at this day, comes the parties to the above-entitled cause, by their respective solicitors, as heretofore, and the court having heard the argument of counsel upon the exceptions to the answer of defendant Starr, will advise thereof.

And afterwards, to wit, on February 18th, A. D. 1868, being the 23rd judicial day of the January term of the circuit court for the district of Oregon, Hon. M. P. Deady, judge, among other, the following proceedings were had, that is to say:

JOHN R. LAMB ET AL. } In equity.
vs.
L. M. STARR ET AL. }

45 Now, at this day, comes the parties to the above-entitled cause, by their respective solicitors, as heretofore; and, the court being sufficiently advised in the premises, it is considered that the exceptions to the answer of the defendant Starr be, and the same are, overruled.

And afterwards, to wit, on February 19th, A. D. 1868, the following "motion to take parts of bill for confessed" was filed with the clerk of this court.

In the circuit court of the United States for the district of Oregon.

JOHN R. LAMB AND EMMA S., HIS WIFE, AND Ida Squires, complainants, }
vs.
LEWIS M. STARR & OTHERS, DEFENDANTS. }

The complainants, by W. W. Page and W. Lair Hill, their solicitors, moves the court that the following-named and specified allegations and matters in complainants' bill herein be taken for confessed:

First. That the complainants are citizens of the State of Kentucky, and the defendants are citizens of the State of Oregon, and that the matters in dispute in this suit exceed the sum of five hundred , exclusive of costs.

Second. That John R. Lamb and Emma S. Lamb are husband and wife.

Third. That Emma S. Lamb and Ida Squires are the sole surviving heirs of Sarah Squires, deceased, who was a daughter of
46 Daniel H. Lownsdale.

Fourth. That, on the 10th day of July, 1850, Daniel H. Lownsdale intermarried with Nancy Gillihan, widow of William Gillihan, deceased.

Fifth. That, at the time of his marriage with widow Gillihan, Daniel H. had three living children by a former wife, namely, James P. O. Lownsdale, Mary E. Cooper, and Sarah Squires.

Sixth. That Daniel H. had, by his wife Nancy, (widow Gillihan,) two children, namely, Millard O. Lownsdale and Ruth A. Lownsdale.

Seventh. That, at the time of the marriage of Daniel H. & Nancy, the said Nancy had living three children by her former husband, namely, William and Isabella Gillihan, and , and that William and Isabella survived her, and that Isabella was afterwards married to William Potter.

Eighth. That Nancy Lownsdale died on the 15th day of April, 1854, leaving the said children William and Isabella Gillihan and Millard O. & Ruth A. Lownsdale, and the said Daniel survived her.

Ninth. That Daniel H. Lownsdale died on the 4th day of May, 1862, intestate, leaving as his sole surviving heirs at law, the complainants, Emma S. Lamb and Ida Squires, and the defendants James P. O.
47 Lownsdale, Mary E. Cooper, Millard O., and Ruth A. Lownsdale.

Tenth. That W'm E. Cooper is the husband of Mary E. Cooper, and said Millard O. is a minor, having for his guardian the said James P. O., and the said Ruth A. is a minor, having for her guardian John A. Blanchard.

Eleventh. That the west half of donation land claims No. 40 and 66, situate in Multnomah County, Oregon, and now within the city of Portland, was set apart and granted to Nancy Lownsdale, as the wife of Daniel, under the law commonly known as the donation law, and said west half was patented to her, to have and to hold to her and her heirs, by the proper officers of the Land Department of the Land Office of the United States, and that the said block 218 is included in the land so set apart and granted to Nancy.

Twelfth. That said Nancy died seized of said land so granted to her, and upon her death her said children and the said Daniel became seized thereof in equal portions of $\frac{1}{5}$ each.

Thirteenth, That, on January, 1860, said Isabella and her husband, William Potter, by deed, conveyed the interest of the said Isabella to said Daniel in said land granted to Nancy.

Fourteenth. That said Daniel died seized of $\frac{2}{5}$, undivided, of said tract or land granted to said Nancy as aforesaid.

Fifteenth. That the matters and things in said bill set forth in
48 regard to the said suit and partition by William Gillihan in the circuit court of the State are true, except the allegations, made by mistake, that the heirs of Daniel paid part of the contribution or owelty mentioned in said complaint.

And for cause of this motion, the complainants say that all said matters and allegations are unanswered by the separate answer of the defendant Starr.

W. W. PAGE & W. LAIR HILL,
Solicitors for Complainants.

(Endorsed:) Filed February 19, 1868. R. Wilcox, clerk.

And afterwards, to wit, on February 19th, A. D. 1868, being the 24th judicial day of the January term of the circuit court for the district of Oregon, Hon. M. P. Deady, judge, among other, the following proceedings were had, that is to say:

JOHN R. LAMB ET AL. } In equity.
vs.
L. M. STARR ET AL. }

Now, at this day, the court having heard the argument of counsel upon the motion of the complainants to take part of the bill herein as confessed, it is considered that said motion be denied.

And afterwards, to wit, on February 20th, A. D. 1868, being the
49 25th judicial day of the January term of the circuit court for the district of Oregon, Hon. M. P. Deady, judge, among other, the following proceedings were had, that is to say:

JOHN R. LAMB ET AL. } In equity.
vs.
L. M. STARR ET AL. }

Now, at this day, in this cause, it is ordered that the complainants herein file a reply within ten days, or set the cause down for hearing upon the bill and answer.

And afterwards, to wit, on February 28th, A. D. 1868, the following general replication was filed with the clerk of this court:

General replication.

In the circuit court of the United States for the district of Oregon.

JOHN R. LAMB & EMMA S. LAMB, AND IDA SQUIRES, complainants,
vs.
LEWIS M. STARR ET AL., DEFENDANTS.

The replication of the complainants above-named to the separate answer of Lewis M. Starr.

The replicants, saving and reserving unto themselves all and every manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saieth that they will aver and prove their said bill to be true, certain, and sufficient in the law to answered unto, and that the said answer of the said defendant is
50 uncertain, untrue, and insufficient to be replied unto by these replicants; without this or any other matter or thing whatsoever in said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and this repliant is and will be ready to aver and prove as this honorable court shall direct. And humbly prays as in and by his said bill he hath already prayed.

Dated at Portland this 28th day of February, 1868.

W. W. PAGE & W. LAIR HILL,
Solicitors for Complainants.

(Endorsed:) "Filed February 28, 1868. R. Wilcox, clerk."

And afterwards, to wit, on May 25th, A. D. 1868, being the 4th judicial day of the May term of the circuit court for the district of Oregon, Hon. M. P. Deady, judge, among other, the following proceedings were had, that is to say:

JOHN R. LAMB ET AL. } In equity.
vs.
L. M. STARR ET AL. }

Now, at this day, comes the complainants in the above-entitled cause, by W. W. Page, esq., their solicitor, and the defendant L. M. Starr, by W. W. Chapman, esq., his solicitor, and, upon motion of defendant's counsel, it is ordered that the time for taking depositions in this cause be extended to and inclusive of the sixth day of June next ensuing, and that this cause be set down for hearing on the eighth day of June next.

51 And afterwards, to wit, on June 9th, A. D. 1868, the following "notice of taking depositions," was filed with the clerk of this court.

In the circuit court of the United States for the district of Oregon.

JOHN R. LAMB, EMMA S. LAMB, & IDA SQUIRES, complainants,
vs.
LEWIS M. STARR ET AL., DEFENDANTS,

To Lewis M. Starr, one of the defendants in the above-entitled suit, and W. W. Chapman, his solicitor:

Take notice that, at ten o'clock a. m., of the 12th day of June, A. D. 1868, before R. Wilcox, esq., clerk of the above-entitled circuit court, at his office in the city of Portland, Oregon, the complainants will take the depositions of Lansing Stout, A. C. Gibbs, W'm M. King, James Terwilliger, Thomas Stephens, I. B. Smith, J. C. Hawthorne, S. Pennoyer, and J. P. O. Lownsdale, to be used and read in evidence at the trial of said suit on the part of the complainants.

Dated this 9th day of June, A. D. 1868.

W. W. PAGE & W. LAIR HILL.
Solicitors for Complainants.

DISTRICT OF OREGON, *ss:*

I hereby certify that I have served the within notice on W. W. Chapman by delivering to him a true copy thereof at Portland, in said district, on the 19th day of June, 1868.

52 AL. ZIEBER,
U. S. Marshal for Oregon.

Service, $4 00; mileage, 12—4 12.

(Endorsed:) "Filed June 9th, 1868. R. Wilcox, clerk."

And afterwards, to wit, on June 11th, A. D. 1868, the following "agreed statement of facts" was filed with the clerk of this court.

In the circuit court of the United States for the district of Oregon.

JOHN R. LAMB ET AL. } In equity.
vs.
LEWIS M. STARR ET AL. }

In order to avoid the trouble of taking testimony, as to the following facts, the same are hereby agreed upon by the respective parties:

First. That Daniel H. Lownsdale and Nancy Lownsdale were married at the time alleged in the bill of complaint, and each died at the time therein alleged.

Second. That their children now surviving are the same as alleged in complainants' bill.

Third. That the complainants resided in, and are citizens, of the
53 State of Kentucky, and the defendant Lewis M. Starr, resides in, and is a citizen of, the State of Oregon.

Fourth. That the property in controversy lies within the west half of the tract of land patented to the said D. H. Lownsdale, and the heirs of Nancy Lownsdale, in Multnomah County, Oregon.

Fifth. That John R. Lamb and Emma S. Lamb are husband and wife. That the owelty was paid by Starr, and that he is in possession, and was at the commencement of this suit.

W. W. PAGE & W. LAIR HILL,
Solicitors for Complainants.
W. W. CHAPMAN,
Att'y for Def't Starr.

It is agreed that the property in controversy exceeds in value the sum of five hundred dollars.

W. W. PAGE & W. LAIR HILL,
Solicitors for Complainants.
W. W. CHAPMAN,
Att'y for Def't Starr.

(Endorsed:) "Filed June 11th 1868. R. Wilcox, clerk."

And afterwards, to wit, on June 16th, A. D. 1868, being the 8th judicial day of the May term of the circuit court for the district of Oregon, Hon. M. P. Deady, judge, among other, the following proceedings were had, that is to say:

54 JOHN R. LAMB ET AL. } In equity.
vs.
L. M. STARR ET AL. }

Now, at this day, in this cause, it is ordered that the same be continued for hearing until Monday the twenty-ninth instant.

And afterwards, to wit, on June 29th, A. D. 1868, being the 9th judicial day of the May term of the circuit court for the district of Oregon, Hon. M. P. Deady, judge, among other, the following proceedings were had, that is to say:

JOHN R. LAMB ET AL. } In equity.
vs.
L. M. STARR ET AL. }

Now, at this day, comes the defendant, by W. W. Chapman, esq.,

his solicitor, and moves the court for a continuance of this cause, and, there being no opposing counsel, it is ordered that this cause be continued until Monday, the thirteenth day of July next ensuing.

And afterwards, to wit, on July 20th, A. D. 1868, the following stipulation was filed with the clerk of this court.

In the circuit court of the United States for the district of Oregon.

JOHN R. LAMB ET AL.
vs.
LEWIS M. STARR ET AL.

55 It is agreed between the plaintiffs and the defendant Starr, that copies of the original papers filed, or used in evidence at the trial, certified by the clerk of this court, may be substituted in the files of the court for such original, and such originals thereupon withdrawn from the files.

W. LAIR HILL & W. W. PAGE,
Solicitors for Complainants.
W. W. CHAPMAN,
Att'y Def't.

(Indorsed:) "Filed July 20, 1868. R. Wilcox, clerk."

And afterwards, to wit, on July 20th, A. D. 1868, being the 11th judicial day of the May term of the circuit court for the district of Oregon, Hon. M. P. Deady, judge, among other, the following proceedings were had, that is to say:

JOHN R. LAMB ET AL.
vs.
L. M. STARR ET AL. } In equity.

Now, at this day comes the complainants in the above-entitled cause, by W. W. Page & W. Lair Hill, esq's, their solicitors, and the defendant, L. M. Starr, by W. W. Chapman, esq, his solicitor; and, the court having heard the evidence of the parties, and argument of the counsel, will advise thereof.

And afterwards, to wit, on July 21st, A. D. 1868, the following motion was filed with the clerk of this court:

56 In the circuit court of the United States for the district of Oregon.

JOHN R. LAMB & EMMA S. LAMB, & IDA Squires, complainants,
vs.
LEWIS M. STARR, JAMES P. O. LOWNSDALE et al.

Now comes the said Hiram & Hannah Smith, and ask leave of the court to file their separate answer in the above-entitled cause.

O. P. MASON,
Att'y for Hiram & Hannah Smith.

(Endorsed:) "Filed July 21, 1868. R. Wilcox, clerk."

And afterwards, to wit, on July 21st, A. D. 1868, the following answer was filed with the clerk of this court:

In the circuit court of the United States for the district of Oregon.

JOHN R. LAMB AND EMMA S. LAMB, AND IDA Squires, complainants,
vs.
LEWIS M. STARR, JAMES P. O. LOWNSDALE, Millard O. Lownsdale, by his guardian, James P. O. Lownsdale; Ruth A. Lownsdale, by John Blanchard, her guardian; Mary E. Cooper, Hiram & Hannah Smith, defendants.

57 The said Hiram Smith and Hannah M. Smith, his wife, for separate answer to the complaint of the complainants herein filed, by permission of the court, allege that the said Hiram and Hannah M. Smith were, more than twenty years since, legally intermarried, and ever since have, and still do, sustain to each other the relation of husband and wife. That the said Hannah M. Smith is the legal owner of, and entitled to hold in severalty two twenty-fifths of the real estate mentioned and described in said complaint as block No. 218, in the city of Portland, Oregon. That said Hannah M. Smith derives title thereto from Daniel H. Lownsdale, deceased.

That, on the 14th day of February, one thousand eight hundred and sixty, the said Daniel H. Lownsdale, then in full life, but now deceased, for and in consideration of the sum of two hundred dollars, to him paid by the said Hannah M. Smith, executed and delivered to the said Hannah M. a deed of quit-claim, conveying thereby to the said Hannah M. Smith all the right, title, interest, claim, demand, or property of the said Daniel H. Lownsdale, both at law and in equity, to two-fifths of all that estate and property in the land claim known as the Portland claim, sold in quit-claim to the said Daniel H. Lownsdale by William L. Potter and his wife, Isabella Ellen Potter, and acknowledged before Addison C. Gibbs on the 27th of January, 1860, it being the two-fifths *of all the rights* of all their rights as heirs of William Gillihan, or his orphans, or of Nancy Lownsdale, as heirs or orphan, as the case may be, to any part of the Portland claim, or the interest of said Potter and his wife
58 as aforesaid, to any lands in Oregon, by virtue of being heirs of the said William Gillihan or of Nancy Lownsdale, as aforesaid.

Said deed was duly recorded on the 12th day of February, 1862, in book C, page 431, of the deed records of Multnomah County, Oregon, where the same now remains of record, and a copy whereof is hereto attached and marked "Exhibit A." Wherefore the said defendants pray that the said Hannah M. Smith may be adjudged to be the owner of two twenty-fifths of said real estate mentioned and described in plaintiffs' complaint, that her portion thereof be allotted and set apart in severalty to her, and that she may have such other and proper relief as to justice appertaining.

O. P. MASON,
Att'y for Hiram & Hannah Smith.

STATE OF OREGON,
County of Multnomah, ss:

I, Hannah M. Smith, being first duly sworn, do depose and say that I am one of the defendants above named, and that the statements of the

foregoing separate answer of Hiram & Hannah M. Smith are true in substance and in fact.

HANNAH M. SMITH.

Subscribed and sworn to before me this 21st day of July, 1868.
R. WILCOX, *Clerk.*

Lownsdale to Smith.

This indenture, made this fourteenth day of February, A. D. one thousand eight hundred sixty, between Daniel H. Lownsdale, of
59 the county of Multnomah, and State of Oregon, of the first part, and Hannah M. Smith, of the same place, of the second part, witnesseth:

That the party of the first part, in and for the consideration of two hundred dollars to him in hand paid, the receipt whereof is hereby acknowledged, has sold, released, remised, and quit-claimed, and by these presents does sell, release, remise, and quit-claim unto the said Hannah M. Smith, her heirs, executors, and administrators, all my right, title, interest, claim, demand or property, both at law and in equity, to two-fifths of all that estate and property, in the land claim known as the Portland claim, sold in quit-claim to the party of the first part by William L. Potter and his wife, Isabella Ellen Potter, and acknowledged before Addison C. Gibbs, on the 27th of January, 1860, it being the two-fifths of all their rights, *of all their rights* as heirs of William Gillihan or his orphans, or of Nancy Lownsdale, as heirs or orphans, as the case may be, to any part of the Portland claim, or the interest of the said Potter and his wife as aforesaid to any lands in Oregon, by virtue of being heirs of the said William Gillihan or of Nancy Lownsdale as aforesaid, together with all and singular the appurtenances thereunto belonging: To have and to hold all and singular the interests, claims, demands, as aforesaid, to the use and benefit of the said party of the second part to her own use and benefit forever.

In witness whereof I, the party of the first part, have hereunto set my hand and affixed my seal, this date above written.

DANIEL H. LOWNSDALE. [SEAL.]

In presence of—
J. H. MORTON.
A. H. MORTON.

60 STATE OF OREGON, *Multnomah County, ss:*

Be it remembered that, on the 14th day of February, 1860, before me, a justice of the peace in and for said county, personally appeared *before me* Daniel H. Lownsdale and acknowledged he signed and executed the within deed of his own free will for the purposes therein described. In witness whereof I have hereunto set my hand.

O. RISLEY,
Justice of the Peace.

Rec'd for record, February 12th, 1862, and recorded in book C, page 431.

(Endorsed:) "Filed July 21, 1868. R. Wilcox, clerk."

And afterwards, to wit, on September 9th, A. D. 1868, the following decree was entered of record:

United States circuit court, district of Oregon, September term, 1868, Wednesday the ninth day of September, before the honorable Matthew P. Deady, judge of the U. S. district court for the district aforesaid.

JOHN R. LAMB AND EMMA, HIS WIFE, AND IDA Squires,
vs.
LEWIS M. STARR, JAMES P. O. LOWNSDALE, Millard O. Lownsdale, Ruth A. Lownsdale, Mary E. Cooper, and Hiram Smith and Hannah, his wife. } In equity.

This cause came on to be heard at the May term of this court, 1868, upon the original complaint and amendments thereto, the answer of the defendant Starr, and the replication thereto, and the proofs and exhibits, and was argued by Messrs. Page and Hill, of counsel for the complainants, and Mr. W. W. Chapman, of counsel for the defendant Starr.

And thereupon the cause was continued until the present term for deliberation and advisement.

And now, on this day, it appearing to the court that Daniel H. Lownsdale in his lifetime became the owner in fee of two undivided fifths of the west half of the Lownsdale donation claim, including block 218, as mentioned and described in the complaint herein, one-fifth thereof by donation from the United States, upon the death of said Nancy, before the issuance of a patent thereto, as her survivor and husband, and the other fifth by purchase from Isabella Ellen Potter, one of the children and successors in interest of said Nancy, and her husband William Potter; and that said Daniel H., on April 1, 1858, sold and quit-claimed to Lansing Stout one undivided fifth of said block 218, in trust, that he, the said Stout, would reduce the same to possession and make a certain disposition and use of the same for the benefit of said Lownsdale's creditors, of which undivided fifth the defendant Starr, at the commencement of this suit, was and still is legal owner in fee, he having acquired title to the same by conveyances, duly executed from Stout and his grantees, in good faith and for a valuable consideration, without notice of
62 such trust; and that, on the death of said Daniel H. Lownsdale, on May 4, 1862, without will, such two-fifths of the west half of the Lownsdale donation claim, including block 218 aforesaid, descended to the surviving children of said Daniel H., namely, Mary E. Cooper, James P. O. Lownsdale, Millard O. Lownsdale, and Ruth A. Lownsdale, defendants herein, and to the representatives of Sarah Squires, the daughter of said Daniel H., before that time deceased, namely, Emma Lamb and Ida Squires, in equal parts, less certain undivided portions thereof before that time sold and conveyed by said Daniel H. to third persons; and that upon the death of said Daniel H. and the descent aforesaid, said block 218 was owned in common as follows: one-fifth by the defendant Starr, one-fifth by the children of Daniel H. and their representatives above-mentioned, and the other three-fifths by William Gillihan jr., Millard O. Lownsdale, and Ruth A. Lownsdale, children of and successors in interest to said Nancy, and that said children of Nancy, as her successors in interest, were also the legal owners of three undivided fifths of the whole of the west half of the Lownsdale donation claim; and that the circuit court for the county of Multnomah, State of Oregon, at the suit of William Gillihan, jr, aforesaid, on August 12, 1865, by its decree, duly given and entered, made partition of said west

half between the children of Nancy aforesaid, and the heirs and grantees of Daniel H., including said block 218, and that by said decree certain specified parts of said west half *was* set apart to said William Gillihan, j'r, Millard O., and Ruth A. Lownsdale, in severalty, and the re-
63 maining portion of said west half, including block 218, aforesaid, to the heirs and vendees of Daniel H., according to their respective interests, in common; and that by reason of such partition being unequal in quantity and value as between the children of Nancy aforesaid and the heirs and vendees aforesaid of Daniel H., said court, by said decree further provided, that said children of Nancy should have a lien upon all that portion of the west half set apart to the heirs and vendees of Daniel H. as aforesaid, for the sum in the aggregate, of $39,-156 02, the same being the compensation decreed by said court to said children of Nancy, on account of the inequality of said partition, as aforesaid, of which aggregate sum $1,533 45, was apportioned to block 218 aforesaid, and made a lien thereon, with the privilege to any person claiming an interest therein under Daniel H. to pay the amount assessed thereon, and thereafter such person to have a lien thereon as a security for being reimbursed such sum, if he should afterwards be evicted therefrom or from any portion thereof; and that the defendant Starr, before the commencement of this suit, had paid the children of Nancy aforesaid, the owelty assessed upon said block 218, to wit, the sum of $1,533 45; and that, at the commencement of this suit, the defendant Starr was, and now is, in the possession of said block 218, as tenant in common, with the heirs aforesaid of Daniel H. Lownsdale; and that the defendants Hiram Smith and Hannah, his wife, or either of them, have no estate or interest in or claim to block 218, or any portion thereof.

Therefore, the premises being first duly considered, it is adjudged and decreed that the defendants Hiram Smith and Hannah, his
64 wife, or either of them, have no estate or interest in block 218 aforesaid, or any claim in law or equity thereto, or any portion thereof; and that, at the commencement of this suit and ever since, the defendants, Starr, Mary E. Cooper, James P. O. Lownsdale, Millard O. Lownsdale, Ruth A. Lownsdale, and the complainants, Emma Lamb and Ida Squires, were the legal owners, and seized of the legal estate and interest in fee simple, of said block 218, as tenants in common; and that the said Starr was the legal owner, and so seized of five undivided twenty-fifths of said block 218; and that Mary E. Cooper, James P. O. Lownsdale, Millard O. Lownsdale, and Ruth A. Lownsdale were each the legal owners and so seized of four undivided twenty-fifths of said block 218; and that the said Emma Lamb and Ida Squires were each the legal owners and so seized of two undivided twenty-fifths of said block 218.

And it is further ordered and decreed that George H. Belden, John Catlin and Absalom B. Halleck be, and they hereby are, appointed commissioners to partition said block 218 among said tenants, according to their respective interests therein, as herein ascertained and determined, upon a view of the premises, quality and quantity relatively considered, and report their doings in this behalf, with all convenient speed to this court, for confirmation or other action, as to said court may appear right and just; and the said commissioners are also required to ascertain and report whether or not it would promote the interests of such tenants to sell the premises and partition the proceeds among them; and also to make partition of such premises, so as to allot
65 one-fifth thereof to the defendant Starr, and the other four-fifths

to the other tenants aforesaid in common, quantity and quality relatively considered.

MATTHEW P. DEADY, *Judge.*

(Endorsed:) "Filed Sept. 9, 1868. R. Wilcox, clerk."

And afterwards, to wit, on October 12th, A. D. 1868, the following report of the commissioners was filed with the clerk of this court:

To George H. Belden, John Catlin, and Absalom B. Halleck, esquires:

Be it remembered that, at a regular term of the circuit court of the United States for the district of Oregon, begun and holden at Portland, on Monday, the 7th day of September, A. D. 1868, at which was present the Hon. M. P. Deady, judge of the district court of the United States for said district, the following proceedings were had, that is to say:

JOHN R. LAMB AND EMMA, HIS WIFE, AND IDA Squires,
vs.
LEWIS M. STARR, JAMES P. O. LOWNSDALE, Millard O. Lownsdale, Ruth A. Lownsdale, Mary E. Cooper, and Hiram Smith and Hannah, his wife. } In equity.

It is adjudged and ordered that the defendants Hiram Smith and Hannah, his wife, or either of them, have no estate or interest in block 218 aforesaid, or any claim in law or equity thereto, or any por-
66 tion thereof, and that, at the commencement of this suit and ever since, the defendants Starr, Mary E. Cooper, James P. O. Lownsdale, Millard O. Lownsdale, Ruth A. Lownsdale, and the complainants Emma Lamb and Ida Squires, were the legal owners, and seized of the legal estate and interest, in fee simple, of said block 218, as tenants in common; and that the said Starr was the legal owner and so seized of five undivided twenty-fifths of said block 218, and that Mary E. Cooper, James P. O. Lownsdale, Millard O. Lownsdale, and Ruth A. Lownsdale were each the legal owners and so seized of four undivided twenty-fifths of said block 218, and that the said Emma Lamb and Ida Squires were each the legal owners and so seized of two undivided twenty-fifths of said block 218.

And it is further ordered and decreed that George H. Belden, John Catlin, and Absalom B. Halleck be, and they hereby are, appointed commissioners to partition said block 218 among said tenants, according to their respective interests therein, as herein ascertained and determined, upon a view of the premises, quality and quantity relatively considered, and report their doings in this behalf with all convenient speed, to this court for confirmation or other action, as to said court may appear right and just; and the said commissioners are also required to ascertain and report whether or not it would promote the interests of such tenants to sell the premises and partition the proceeds among them; and also to make partition of such premises, so as to allot one-fifth thereof to the defendant Starr, and the other four-fifths to the
67 other tenants aforesaid in common, quantity and quality relatively considered.

MATTHEW P. DEADY, *Judge.*

DISTRICT OF OREGON, *ss:*

I, R. Wilcox, clerk of the circuit court of the United States for the district of Oregon, hereby certify that the foregoing is a true and correct extract from the proceedings of the said court, as now remains of record in the journal thereof.

Witness my hand and the seal of said court at Portland, this 25th day of September, A. D. 1868.

[U. S. CIRCUIT COURT SEAL.] R. WILCOX, *Clerk.*

We, George H. Belden and John Catlin, two of the commissioners within named, do severally swear that we will honestly and impartially execute the trust reposed in us by virtue of a decree, of which the within is a certified copy, and make partition as therein directed by the court.

(S'd) GEO. H. BELDEN.
(S'd) JOHN CATLIN.

Subscribed & sworn this 7th day of October, 1868, before me.

R. WILCOX, *Clerk.*

I, Absalom B. Halleck, one of the commissioners within named,
68 do solemnly affirm that I will honestly and impartially execute the trust reposed in me by virtue of a decree, of which the within is a certified copy, and make partition as therein directed by the court.

(S'd) A. B. HALLECK.

Affirmed & subscribed Oct. 8, 1868.

R. WILCOX, *Clerk.*

In the circuit court of the United States for the district of Oregon.

JOHN R. LAMB AND EMMA, HIS WIFE, AND Ida Squires,
vs.
LEWIS M. STARR, JAMES P. O. LOWNSDALE, Millard O. Lownsdale, Ruth A. Lownsdale, Mary E. Cooper, and Hiram Smith and Hannah, his wife.

To the circuit court of the United States for the district of Oregon:

In pursuance of and in obedience to a decree in said court in the above-entitled cause, a duly certified copy of which is hereto attached, we, the said commissioners therein named, respectfully report and return that, having severally taken the oath or affirmation hereto annexed, and having carefully examined the premises described in said copy of decree, we have made partition thereof, so as to allot to the defendant Starr, one-fifth, and to the other tenants in common, mentioned as such in said decree, the other four-fifths of said premises, quantity and
69 quality relatively considered; and that we have set off in severalty to the said Starr those certain parcels of said block 218, designated upon the maps and plats of the city of Portland as lots 7 and 8; and to the other tenants in common the remainder of said block, consisting of lots 1, 2, 3, 4, 5, & 6; and that, in our judgement, the allotment to the said defendant Starr, is of one-fifth the value of the whole of said premises.

And we further report that the said four-fifths of the premises aforesaid cannot be further partitioned without material injury to the parties interested.

In witness whereof, we, the said commissioners, have set our hands to this our report this 7th day of October, A. D. 1868.

(S'd) GEO. H. BELDEN.
(S'd) JOHN CATLIN.
(S'd) A. B. HALLECK.

(Endorsed:) "Filed Oct. 12, 1868. R. Wilcox, clerk."

And afterwards, to wit, on October 12th, A. D. 1868, being the 5th judicial day of the September term of the circuit court for the district of Oregon, Hon. M. P. Deady, judge, among other, the following proceedings were had, that is to say—

JOHN R. LAMB ET AL.
vs.
L. M. STARR ET AL. } In equity.

Now, at this day, comes the complainants by W. W. Page and W. Lair Hill, esquires, their solicitors, and moves the court to confirm the report of the commissioners heretofore made in this cause.

70 And afterwards, to wit, on October 13, 1868, the following motion was filed with the clerk of this court:

In the circuit court of the United States for the district of Oregon.

JOHN R. LAMB & EMMA, HIS WIFE, & IDA Squires,
vs.
LEWIS M. STARR, JAMES P. O. LOWNSDALE, Ruth A. Lownsdale, Mary E. Cooper, Hiram Smith & Hannah, his wife.

And now comes the complainants, by W. W. Page and W. Lair Hill, their solicitors, and moves the court to confirm the report of the commissioners heretofore appointed to make partition of block 218, in the city of Portland, and for a decree partitioning said block according to the said report, and that the interest of the complainants and of the defendants, except the defendant Starr, be set off in one body, and not severally.

W. W. PAGE,
W. LAIR HILL,
Sol's for Complainants.

(Endorsed:) "Filed Oct. 13, 1868. R. Wilcox, clerk."

And afterwards, to wit, on November 7th, A. D. 1868, the following stipulation was filed with the clerk of this court:

In the circuit court of the United States for the district of Oregon.

71 JOHN R. LAMB ET AL., COMPLAINANTS,
vs.
LEWIS M. STARR, JAMES P. O. LOWNSDALE, W'm E. Cooper and Mary E., his wife; Ruth A. Lownsdale, by John A. Blanchard, her guardian; Millard O. Lownsdale, by the said James P. O., his guardian, defendants.

The above-named defendants, excepting L. M. Starr, by their attorney, M. F. Mulkey, hereby consent agree that their interest may be allotted and set apart to them as a whole, and as tenants in common with the complainants.

Portland, Nov. 7, 1868.

W. W. PAGE,
W. LAIR HILL,
Solicitors for Compl'ts.
M. F. MULKEY,
Solicitor for said Def'ts, except Starr.

(Endorsed:) "Filed Nov. 7, 1868. R. Wilcox, clerk."

And afterwards, to wit, on December 12th, A. D. 1868, being the 30th judicial day of the September term of the circuit court for the district of Oregon, Hon. M. P. Deady, judge, among other, the following proceedings were had, that is to say:

JOHN R. LAMB ET AL.
vs.
L. M. STARR ET AL. } In equity.

72 Now, at this day, comes the complainants in the above-entitled cause, by Mr. W. W. Page and Mr. W. Lair Hill, their solicitors, and the defendant Starr, by W. W. Chapman, his solicitor; and, the court having heard the report of the commissioners heretofore appointed to make partitions of the property in controversy, in accordance with the decree herein read, and counsel having been heard thereon, it is ordered and adjudged that the said report be, and the same is hereby, confirmed.

And afterwards, to wit, on December 14th, A. D. 1868, the following motion was filed with the clerk of this court:

In the circuit court of the United States for the district of Oregon.

JOHN R. LAMB & OTHERS
vs.
L. M. STARR & OTHERS. } Equity.

And now comes the respondent, L. M. Starr, and moves the court to set aside the order confirming the report of the referees, and amend the said report so as to allow this respondent the sum of $ for improvements, and the sum of $ for taxes paid by the respondent, and those under whom he claims.

Dec. 14, 1868.

CHAPMAN,
Att'y for Respondent.

(Endorsed:) "Filed Dec. 14, 1868. R. Wilcox, clerk."

And afterwards, to wit, on January 29th, 1869, the following stipulation was filed with the clerk of this court:

In the circuit court of the United States for the district of Oregon.

73 JOHN R. LAMB, WIFE, ET AL., COMPL'TS,
vs.
L. M. STARR ET AL., DEFT'S.

It is agreed that the plaintiffs may withdraw from the files of the court the letters of guardianship therein filed.

Portland, Oregon, Jan. 29, 1869.

W. W. PAGE,
Of Solicitor for Compl'ts.
W. W. CHAPMAN,
Def'ts Att'y.

(Endorsed:) "Filed Jan. 9, 1869. R. Wilcox, clerk."

And afterwards, to wit, on February 1st, A. D. 1869, being the 8th judicial day of the January term of the circuit court for the district of Oregon, Hon. M. P. Deady, judge, among other, the following proceedings were had, that is to say:

JOHN R. LAMB ET AL.
vs.
LEWIS M. STARR ET AL. } In equity.

Now, at this day, comes the complainants in the above-entitled cause, by Messrs. Page and Hill, their solicitors, and the defendant Starr, by Mr. W. W. Chapman, his solicitor; and, on motion of counsel for said defendant Starr, it is ordered that the matter as to taxes paid by either party upon the property in controversy, be refer'ed to the clerk of this court, as master, to take the testimony of the parties, and report the same to the court.

And afterwards, to wit, on February 8th, A. D. 1869, the fol-
74 lowing agreement was filed with the clerk of this court:

In the circuit court of the United States for the district of Oregon.

JOHN R. LAMB ET AL.
vs.
L. M. STARR ET AL. } In equity.

In pursuance of an order made in the above-entitled cause on the 1st day of February, 1869, by which it was refer'ed to the clerk of said court, as master, to take and report the testimony as to the amount of taxes paid by the parties thereto on the property in controversy in said suit, I, R. Wilcox, clerk of said court, do report that I have been attended by W. Lair Hill, esq., of counsel for the complainants, and L. M. Starr, one of the defendants, in person, on the 6th day of February, inst., in pursuance of notice, and that the parties, by their counsel, have stipulated and agreed as to the amount of taxes paid and to be paid by the said Starr on the property in question, as by the agreement herewith submitted appears.

Portland, February 8, 1869.

Respectfully submitted,

R. WILCOX, *Master.*

In the circuit court of the United States for the district of Oregon.

JOHN R. LAMB ET AL.
vs.
LEWIS M. STARR ET AL.

It is hereby agreed that the taxes paid by said Starr on the
75 four-fifths of block 218, which has been decreed by this court to belong to the heirs of D. H. Lownsdale, in those years when the same was not assessed to the said heirs, together with the taxes to be paid by the said Starr on account of the same being assessed to him at the last county and city assessment, including school and road taxes, and interest on those already paid, from the date of judgement to this date, amount to one hundred & fifty dollars in gold coin.

This agreement is made simply to avoid the necessity of taking testimony, neither party waiving any question of law as to the effect of the above-agreed facts (upon the subject of taxes.)

W. LAIR HILL,
One of Solicitors for Complainants.
W. W. CHAPMAN,
Att'y for Def't Starr.

(Endorsed:) "Filed Feb. 8, 1869. R. Wilcox, clerk.

And afterwards, to wit, on February 8th. A. D. 1869, being the 9th judicial day of the January term of the circuit court for the district of Oregon, Hon. M. P. Deady, judge, among other, the following proceedings were had, that is to say:

JOHN R. LAMB ET AL.
vs.
LEWIS M. STARR ET AL. } In equity.

Now, at this day, comes the parties to the above-entitled cause, by their respective solicitors, as heretofore; and, the court having heard the report of the master as to the amount of taxes paid by the said defendant Starr on the four-fifths of said block 218, it is adjudged and decreed that the said report be confirmed, and that said defendant Starr recover the amount named in said report.

76 And afterwards, to wit, on March 18th, A. D. 1869, the following "final decree" was entered of record:

United States circuit court, district of Oregon. January term, 1869.

JOHN R. LAMB AND EMMA S. LAMB, HIS WIFE, and Ida Squires, complainants,
vs.
LEWIS M. STARR, JAMES P. O. LOWNSDALE, Millard O. Lownsdale, by his guardian, James P. O. Lownsdale; Ruth A. Lownsdale, by her guardian, John A. Blanchard; Mary E. Cooper, and Hiram Smith and Hannah, his wife, defendants. } In equity.

Suit for partition.—Final decree.

This cause came on to be heard at the January term of this court,

1869, before the Honorable Matthew P. Deady, judge of the United States district court for the district aforesaid, upon the report of the commissioners appointed to make partition of said block 218, pursuant to a decree of this court of September 9, 1868, and the stipulation of the parties filed February 8, 1869, as to the amount of money heretofore paid for taxes upon said block 218 by the defendant Lewis M. Starr, and was argued by Messrs. Page and Hill, of counsel for the complainants, and by Mr. W. W. Chapman, of counsel for the defendant Starr.

77 And, it appearing to the court that the parties aforesaid, the complainants and defendants in this suit (except Hiram Smith and Hannah, his wife,) were, by the decree of this court herein duly given, on September 9, 1868, adjudged to be the legal owners, and seized of the legal estate and interest in fee-simple of said block 218, as tenants in common; and it further appearing that, in and by said decree it was adjudged that Lewis M. Starr was the legal owner and seized as aforesaid of five undivided twenty-fifths of said block 218, and that Mary E. Cooper, James P. O. Lownsdale, Millard O. Lownsdale, and Ruth A. Lownsdale, aforesaid, were each the legal owner and seized as aforesaid of four undivided twenty-fifths of said block 218, and that Emma Lamb and Ida Squires, aforesaid, were each the legal owner and seized as aforesaid of two undivided twenty-fifths of said block 218; and it also appearing, from the report filed herein, October 12, 1868, of the commissioners appointed by the decree of this court aforesaid, to make partition of said block 218 between the tenants in common thereof aforesaid, that said commissioners had made partition of said block 218, whereby lots seven and eight therein were set apart and allotted in severalty to the said Starr, and lots one, two, three, four, five, and six therein were set apart and allotted in common to the remainder of the tenants in common, aforesaid; and it also appearing, from the stipulation filed herein, November 7, 1868, that the complainants and defendants herein (except the said Starr and Hiram and Hannah Smith) consent and agree that their undivided interests in said block 218 may be set apart and allotted to them in common, according to their respective interests therein:

78 Therefore, the premises duly considered, it is adjudged and decreed that the partition made by said commissioners as aforesaid of said block 218, be confirmed, and is hereby declared effectual and conclusive, so that, from henceforth, the said Lewis M. Starr shall be deemed and held to be the owner in severalty of the lots seven and eight aforesaid, and that the said Mary E. Cooper, James P. O. Lownsdale, Millard O. Lownsdale, and Ruth Lownsdale shall be deemed and held to be the owners in common, according to their respective interests as aforesaid, of the lots one, two, three, four, five, and six, aforesaid.

And it further appearing that the said Lewis M. Starr has a lien upon said block 218 for the sum of $1,533 45, with legal interest thereon from and since November 12, 1865, for and on account of a like sum paid by said Starr, as owelty on behalf of his co-tenants herein, as set forth in the complaint; and it further appearing from the stipulation of the parties filed herein, February 8, 1869, that said Lewis M. Starr has paid the sum of $150 for and on account of public taxes duly levied upon said block 218, in excess of the amount for which his undivided interest therein was properly chargeable—

It is therefore adjudged and decreed that said Starr is entitled to receive from the parties herein to whom lots one, two, three, four, five, and six are allotted in common, the sum of $1,533 45, with interest, as

aforesaid, and also, the sum of $150, aforesaid, with legal interest thereon from the date of this decree.

And it is further adjudged and decreed that said Starr have a lien upon the lots last aforesaid to secure the payment of the sums last aforesaid, with interest thereon as aforesaid, until the payment thereof, and that, if said payment is not made within sixty days from
79 the date of this decree then the said Starr, upon application to the clerk of this court, shall have execution against the property aforesaid, that is to say, against lots one, two, three, four, five, and six, in block 218, aforesaid, for the purpose of making said money or any part thereof that may then remain unpaid, out of the proceeds of said lots, and that said lots shall be so offered for sale upon such execution as that there shall be sold thereon only so much thereof as shall be sufficient to make the said money remaining unpaid, after deducting the costs and expenses hereinafter decreed to be paid by said Starr, and to pay the costs and expenses of such execution and sale.

And it is further adjudged and decreed that said Lewis M. Starr shall pay the costs and expenses of this suit, up to and inclusive of the decree of this court aforesaid, dated September 9, 1868, and that the same may be deducted from the amount aforesaid, due said Starr from his co-tenants herein, in proportion to their interests in the block aforesaid.

And it is further ordered and decreed that the clerk of this court tax the costs and expenses aforesaid, and that he allow the commissioners who made the partition herein the sum of five dollars per day for two days each.

MATTHEW P. DEADY, *Judge.*

(Endorsed;) "Filed March 18, 1869. R. Wilcox, clerk."

And afterwards, to wit, on January 28th, A. D. 1869, the following "petition for execution" was filed with the clerk of this court:

80 In the circuit court of the United States for the district of Oregon.

JOHN R. LAMB ET AL. }
vs. }
LEWIS M. STARR ET AL. }

To the honorable the judges of said court:

Your petitioners, John R. Lamb and Emma S., his wife, and Ida Squires, respectfully represent:

That, more than sixty days have elapsed since the final decree was given in this court partitioning block 218, in the city of Portland, and that the charge upon the portion of the said block set apart to the heirs of D. H. Lownsdale has not been paid, and no execution has issued therefor; that said charge is in favor of the defendant Starr, and he was by the decree authorized to issue execution therefor; that, by reason of the petitioner Ida and the defendants Mildred O. and Ruth A. Lownsdale, being infants, their guardians cannot, without the order of the court, sell the property to pay said charge; that said charge is against the property of several persons who are not minors, and against the property of these said infants jointly; that said charge so decreed is drawing interest and ought to be discharged as early as practicable to prevent its absolving the estate of these infants; that the other parties

interested in said land so charged all consent to have so much thereof as is necessary sold to pay said charge.

W. LAIR HILL,
Of Counsel for Petitioners.

81 DISTRICT OF OREGON, *ss:*

I, W'm E. Cooper, guardian of Ida Squires, and att'y-in-fact of John R. & Emma S. Lamb, being first sworn, say that the foregoing petition is true.

W. E. COOPER.

Subscribed & sworn to before me this 28th day of June, 1869.
R. WILCOX, *Clerk.*

(Endorsed:) "Filed June 28, 1869. R. Wilcox, clerk."

And afterwards, to wit, on October 13th, A. D. 1869, the following "execution" was issued out of the office of the clerk of this court:

UNITED STATES OF AMERICA,
District of Oregon, ss:

The President of the United States of America to the marshal of said district or his deputy, greeting:

Whereas, on the 18th day of March, A. D. 1869, a decree was duly given and entered by the hon. the circuit court of the United States for the district of Oregon, in a suit entitled John R. Lamb et al. vs. Lewis M. Starr et al., by which the said Lewis M. Starr was decreed to have a lien upon that certain real property situate in the city of Portland, county of Maltnomah, State of Oregon, known and described on the maps of the said city of Portland as lots numbered one, (1,) two, (2,) three, (3,) four, (4,) five, (5,) and six (6) in block numbered two hundred and eighteen, (218,) in said city, for the sum of fifteen hundred and thirty-three $\frac{45}{100}$ dollars, ($1,533 45,) and interest thereon at the rate of ten per cent. per annum from November 12, 1865, amounting to six
82 hundred and $\frac{62}{100}$ dollars, ($600 62,) and also for the sum of one hundred and fifty ($150) dollars taxes paid on said property by said Lewis M. Starr, and interest thereon from the date of said decree, amounting to the sum of eight $\frac{95}{100}$ dollars, and the sum of $45 86 costs, &c.; and that execution issue against said land to satisfy said lien, commanding the sale at public auction, as upon execution at law, of the smallest amount of said lands which shall be sufficient to satisfy said sums of money, in all amounting to two thousand three hundred and thirty-eight $\frac{86}{100}$ dollars, ($2,338 86,) and interest and accruing costs:

Now, therefore, in the name and by the authority aforesaid, you are hereby commanded, that out of the said lots one, (1,) two, (2,) three, (3,) four, (4,) five, (5,) & six (6) in said block two hundred and eighteen, (218,) in said city of Portland, you cause to be made in manner aforesaid the amount of said decree aforesaid, with the interest and expenses and costs that may accrue; and of this writ make legal service and due return.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, and the seal of our said circuit court hereto affixed this October 13, 1869.

[U. S. CIRCUIT COURT SEAL.] RALPH WILCOX, *Clerk.*

U. S. marshal's notice.

Notice is hereby given that, by virtue of an execution issued out of the office of the clerk of the circuit court of the United States for the district of Oregon, to me directed and delivered, commanding me to sell, out of the following-described property situated in the city of Portland, county of Multnomah, State of Oregon, to wit, lots
83 one, (1,) two, (2,) three, (3,) four, (4,) five, (5,) and six (6) in block numbered two hundred and eighteen, (218,) the smallest amount thereof to satisfy the sum of $2,338 88, and the sum of $145 90, interest and accruing costs, being the amount of a judgment lien upon said property in favor of Lewis M. Starr, entered in said court in a cause wherein John R. Lamb et al. were complainants and Lewis M. Starr et al. were defendants, I will, on the 20th day of November, A. D. 1869, at the hour of 1 o'clock p. m. of said day, in front of the county court-house door, in the city of Portland, district of Oregon, proceed to sell the smallest quantity of said described property to realize the said sums of money above mentioned.

THOMAS G. YOUNG,
U. S. Marshal for Oregon.

STATE OF OREGON, *County of Multnomah, ss:*

I, Henry L. Pittock, being first duly sworn, say that I am publisher and proprietor of "The Daily Oregonian," a newspaper of general circulation, published in the city of Portland, county and State aforesaid; that the attached advertisement, entitled U. S. marshal's notice, was published in said paper once a week for four weeks, the first publication being in the issue of Oct. 22, 1869, and the last in the issue of Nov. 12, 1869, and that, during that time, said paper was regularly circulated among its subscribers.

HENRY L. PITTOCK.

Printers fees, $14 00; notary fees, 50—14 50.

Subscribed & sworn to before me this 11th day of December, 1869.
[GILLETTE'S SEAL.] P. W. GILLETTE,
Notary Public.

84 (Endorsed:) "Rec'd Oct. 18, 1869: Am't, $2,338 88; interest, 20 00; mileage, 12; poundage, 113 55; advertisement, 14 00—$2,486 55. Returned & filed Dec. 11, 1869. Ralph Wilcox, clerk."

In the circuit court of the United States for the district of Oregon.

JOHN R. LAMB ET AL.
vs.
LEWIS M. STARR ET AL.

To THOMAS YOUNG, marshal of said district:

You are hereby directed to return the execution in your hands in the above-entitled suit, without the sale of property thereon, at the costs of the complainants.

Portland, Nov. 20, 1869.

W. LAIR HILL,
Of Counsel for Complainant.

DISTRICT OF OREGON, *ss:*

In obedience to the command of the within order, I herewith return the execution in the within-entitled cause, without making sale of the property described therein, at costs of complainants.

THOMAS G. YOUNG,
83 *U. S. Marshal for Oregon.*
By JOHN DOLAN, *Deputy.*

Advertising, $14 00; mileage, 25—$14 25.
Dated Dec. 11, 1869.

(Endorsed:) "Filed Nov. 20, 1869. R. Wilcox, clerk."

In the circuit court of the United States for the district of Oregon.

JOHN R. LAMB ET AL. *vs.* L. M. STARR ET AL. } In equity.

Deposition' of Lansing Stout and W. H. Bennett, taken and subscribed before me, R. Wilcox, commissioner of the U. S. circuit court for the district of Oregon, on the 13th day of June, A. D. 1867, between the hours of one and five o'clock p. m., in pursuance of the agreement and consent of the parties, W. W. Page and W. Lair Hill, esquires, appearing for the complainants, and W. W. Chapman, esq., for the defendant L. M. Starr.

LANSING STOUT, being duly sworn, testified in answer to interrogatories propounded by the counsel for defendant, as follows:

Int. 1st. Are you acquainted with the def't L. M. Starr, & were you acquainted with D. H. Lownsdale in his lifetime?

Ans. I am acquainted with Mr. Starr, and was acquainted with Mr. Lownsdale from 1857 until his death.

2nd. Look upon exhibit marked "A," filed with complainants' bill, and state whether you are the person mentioned therein as the
86 grantee.

Ans. I am.

3rd. Look particularly at the last 5 or 6 lines of that instrument, and state, if you can, what the intent and meaning of the covenant therein embraced is, as understood by the parties at the time.

(Objected to as incompetent and immaterial.)

Ans. At the time this deed was given to me, W. W. Chapman & Stephen Coffin were claiming some two-thirds or more of the donation claim made by Lownsdale. In case their claim was allowed, it was probable that this land, or a portion of it, might come within the part allowed to the wife of Dan'l H. Lownsdale, and it was intended to protect me from any such claim.

4th. At that time where did Lownsdale claim the dividing line to be, between himself and wife, of the Portland tract?

(Objected to as above.)

Ans. I cannot state from memory where, but this land he assured me would be included in his part, if Coffin & Chapman did not maintain their claim. I do not know that it had then been divided between himself and wife.

5th. State generally the object and intent of the parties in the covenant refer'ed to with reference to all the property, and any description of disturbance of your possession.

(Objected to as above.)

Ans. This deed relates to property, with exception of block 132, which was admitted by Coffin & Chapman to be on Lownsdale's portion. The object of that last clause in the deed was to protect me against any
87 claim that Mrs. Lownsdale's heirs, she then being dead, might assert, in case it should within the portion allotted to her.

6th. State whether it was a particular interest in the blocks of which Lownsdale delivered you the possession, or was it the entire block or blocks refer'ed to.

(Objected to as above, & not the best evidence.)

Ans. It was the entire property in all the blocks mentioned in the deed; it was understood that Mr. Farrar, being my partner, was to receive one-half the property.

7th. State anything you know of advantage to the defendant, which you have not already stated.

(Objected to as above, and to' indefinite to be understood.)

Ans. I do not know enough about the case to know what would be to his advantage; I do not know of anything to answer that would be proper for me to state without further interrogatories.

Cross-int's by W. Lair Hill, esq.:

1st. You have spoken of the last few lines of Exhibit A, to which you have refer'ed, being intended to secure you against certain contingencies—was not the whole of that instrument intended simply to convey the interest therein described to you in trust for D. H. Lownsdale.

(Objected to as incompetent, irrelevant, and leading, and not the best evidence.)

Ans. It was not; no such thing was ever thought of or talked of.

2nd. Look at this instrument (marked Exhibit X & made a part hereof,) and state if you ever saw it before; and if so, when and where, and what was the occasion of signing that instrument.

Ans. I executed that instrument; my recollections of the terms
88 of that instrument are somewhat different from the face of it. The intention was, at the time, and it was understood to be, that the property was to be mine and under my control in all respects, to be appropriated for the professional fees of W'm H. Farrar & myself, or for any other purpose that we desired to use it. We were to have one-fourth of all the property we recovered for him on the Portland town site, and to use this in payment of our fees or otherwise as we saw fit, with the right, if we desired, to return this property to him or retain it as a portion of our fees; and, as farther answer, I wish to make Exhibit "Y" a part of my answer. That accounting for the property only related to our fees. There was a prospect of some litigation with the school district here about the title to the property, and it was not intended in the final settlement that we should allow him more for the property than we actually realized.

3rd. Did you not, in one or more public addresses delivered in Portland when you were a candidate for Congress, state publicly that you only held this property in trust for Lownsdale, and had no further interest in it or was not the owner of it, & did you not have substantially the same thing published at that time in printed form?

(Objected to, as above, by def't.)

Ans. I do not recollect that any publication was ever made or that I ever authorized any to be made. I do not think that anything of any conveyance was said while I was a candidate for Congress. What was said publicly by me, I think was said the year before, when I was

89 a candidate for county judge—in 1858. I think I said then substantially as I have now said in my former answer, with the addition of the statement of Farrar & Stout's agreement with Lownsdale, as his attorneys, and that I would be willing at any time to reconvey that property deeded to me by Lownsdale, and relinquish to the city & school district all claim that Farrar & Stout had to it by virtue of any agreement we had with Lownsdale as his attorneys.

(Objected to, as above, by def't.)

4th. I believe you have not stated when and where Exhibit "X" was executed.

(Objected to, as above.)

Ans. I think it was executed on the same day with Exhibit "A."

5th. State if the property described in Exhibit "X" is the same as described in Exhibit "A."

(Objected to, as above.)

Ans. I have *not* doubt but it is. I am confident that it is.

6th. Is Exhibit Y the former agreement refer'ed to in Exhibit X?

Ans. Yes.

7th. I understood you to say that you were to have the right to return this property to Lownsdale, and not to keep it for fees; was it not then conveyed to you as security for your fees?

(Objected, as before.)

Ans. It was not conveyed as security; at that time we had received no compensation for services, that I remember of; this land was conveyed to me and I was to make such disposition of it as I deemed best, and as my own property, and account to him for it in the final settlement; and, as it was doubtful whether, on account of a probable controversy with the city & school district, I should be able to

90 realize the amount specified as a consideration in the deed, it was provided in Exhibit "X" that, in estimating our one-fourth under Exhibit "Y" we should be charged simply with what we realized, instead of the consideration mentioned in the deed.

8th. Look at this instrument, marked Exhibit "Y," and made a part of this question, and state whether you know the signature, and whose signature it is, and whether the person whose signature it is, was the partner refer'ed to in the Exhibits X & Y, and to whom you have refer'ed *to* in your testimony before.

(Objected to, as above.)

Ans. It is the signature of W'm H. Farrar, the person refer'ed to by me heretofore as my partner.

Re-examination:

1st. Do you know of anything farther, of interest to the def't, which you have not stated? If so, state it.

(Objected to by pl'ff.)

Ans. It was not understood to be necessary for me to sell this land and convert it into money in making our settlement, but, if I desired, could retain the land, allowing the consideration specified in the deed, Exhibit Y. I never saw before and never knew anything about it before. A. C. Gibbs, had a power of att'y from me; whether he ever did anything under that I do not know; my recollection is that he had no authority under that power to convey real estate. When Exhibit Y was executed, I was in Washington City; when Exhibit X and A were executed, W. H. Farrar was not in Oregon.

LANSING STOUT.

91 W. H. BENNETT, being duly sworn, says in answer to interrogatories by att'y for def't:

1st. Were you acquainted with W'm Gillihan in his lifetime, and Nancy, his wife?

Ans. Yes; I was.

2nd. Where did you know him first; and if you know, where did he reside in the years 1846 & '7?

Ans. I knew him in what was called Tuality County, Oregon Territory. He resided on Sauvie's Island.

3rd. State, as near as you can, whether he held a claim of land on Sauvie's Island, and when he first took it up.

(Objected to as immaterial.)

Ans. I can't tell when he first took it up; I know he lived upon a piece of land on the island, but I don't know whether he had a claim on it.

4th. Was you ever at that place after his death; and if so, who resided there?

Ans. I was; Mrs. Gillihan, the widow, afterwards Mrs. Lownsdale.

5th. Where was Nancy Gillihan married to D. H. Lownsdale?

(Objected to, as above.)

Ans. I think she was married on Sauvie's Island, on that place.

6th. State, as near as you can, your first knowledge of the residence of Gillihan, on the tract referred to.

(Same objection.)

Ans. My impression is that he was there in the winter of 1846, & '7. I am certain he was there in 1848.

(Answer objected to by pl'ff' att'y.)

Cross-examination by W. Lair Hill, esq.:

92 1st. Gillihan and his family were in California, were they not, at the time of his death?

Ans. I believe they were.

Re-examination:

1st. State, if you know, whether he went there permanently to reside, or whether he went there merely to dig gold.

(Objected to, as before.)

Ans. I travelled with Gillihan a part of the way to California in 1849, and saw him afterwards in California, and my impression, formed from conversation with him, was that he was going to return to Oregon; he was mining there.

2nd. Did you learn of him whether he still claimed the land on Sauvie's Island, where he had resided?

(Objected to, because the witness has always stated that he did'nt know whether he claimed to hold the land or not.)

Ans. I never heard him say anything about it.

W. H. BENNETT.

DISTRICT OF OREGON, *ss:*

I, R. Wilcox, commissioner of the U. S. circuit court for the district aforesaid, do hereby certify that the foregoing depositions were taken before me at my office, in the city of Portland, Oregon, on the day and between the hours mentioned therein; that before the examination the witnesses were severally sworn to tell the truth, the whole truth, and nothing but the truth; that the depositions were read to the witnesses, respectively, and thereupon subscribed by them.

93 In witness whereof I have hereunto subscribed my name this 15th day of June, A. D. 1868.

R. WILCOX,
U. S. Commissioner.

"X."

PORTLAND, OREGON TERRITORY, *April, A. D.* 1868.

Received of Daniel H. Lownsdale a quit-claim deed to five blocks of lots containing eight lots each, valued at thirty-eight hundred dollars, to be used in the best manner I can for the payment of the debt against said Lownsdale, and to be accounted for by me at the final best value which can be received for them, in the final settlement, as the acting agent and partner of William H. Farrar, (in the practice of law,) according to the stipulations of an agreement entered into on the 24th day of August, A. D. 1857, between us and said Lownsdale, in relation to his legal business and advice; but if said land shall not net that amount of valuable funds, then to be settled for at what can be realized from the same, or divided by said agreement; but it is also agreed & proposed by me, to either sell or reduce it to possession on the best terms in my power, and allowed to use such means and pay for such expenses of reducing it to possession out of said property.

LANSING STOUT.

"Y."

Articles of agreement entered into between William H. Farrer and Lansing Stout, of the first part, and Daniel H. Lownsdale, of the second part, witnesseth:

Where's Daniel H. Lownsdale, of the city of Portland, O. T., having been indebted to various individuals in considerable amounts on
94 and before the 12th day September, one thousand eight hundred and fifty-six, (1856,) and on said day of September of said year, the said Lownsdale assigned all his property, both real and personal, to Charles M. Carter and Joseph S. Smith, in trust, for the special purpose of paying the indebtedness as aforesaid, of all the legal and equitable liabilities of the said Lownsdale, as will more fully appear from the deed of assignment to said Carter and Smith, filed in the auditor's office in the County of Multnomah, the same also providing for a return to the said Lownsdale of all that shall remain of said property after paying the said indebtedness:

And whereas the said William H. Farrar and Lansing Stout, are employed by and acting for the said Carter and Smith, as their attorneys in said business, it is agreed between the parties to this instrument that the said Farrar and Stout shall well and faithfully look after and attend to the interests of the said Lownsdale in reference to all the property thus assigned, and all the debts owing to or by him at the time of said assignment, and well and truly perform all the duties of attorneys, counsellors, or solicitors, in reference to said affairs, and aid, as far as is consistent with their position as attorneys for said Carter and Smith in said assignment, and attorneys for the heirs of the wife of said Lownsdale, now deceased, to save to the said Lownsdale all that can justly be saved to him after the objects of said assignment are fulfilled, and in consideration thereof it is agreed further between the parties hereto, that the said Farrar and Stout shall receive for their services, of said Lownsdale, one-fourth of all the property, real and personal,

95 choses in action and demands in law or equity, which the said Lownsdale shall own or possess, upon the return to him of said property assigned; and the said Daniel H. Lownsdale hereby binds himself upon fulfilling these conditions on the part of the said Farrar & Stout, and upon the return to him of such property to execute a good and sufficient deed in fee-simple of one-fourth of all his real property, and one-fourth of all his equitable or legal rights to lands by virtue of the donation laws of Congress, which he claims, and to convey and transfer to them ¼ *one-fourth* of all personal property, or choses in action he possesses.

And it is further agreed and understood between these parties that the said Farrar & Stout shall see to and attend, as the attorneys for the said Lownsdale, all matters in reference to the donation right of the said Lownsdale, in Multnomah County, O. T., before the register and receiver of Oregon Territory, and faithfully present the same before them; and it is further agreed that the compensation here fixed is not to apply for any services the said Farrar and Stout may perform as attorneys for the said Carter and Smith, or for the heirs before refer'ed to.

Signed, sealed, and delivered this 24th day of August, one thousand eight hundred and fifty-seven.

W. H. FARRAR. [SEAL.]
LANSING STOUT. [SEAL.]
D. H. LOWNSDALE. [SEAL.]

Witnesses:

W. H. FRUSH.
SHRUBRICK NORRIS.

DISTRICT OF OREGON, *ss:*

I, R. Wilcox, commissioner of the U. S. circuit court for the
96 district aforesaid, do certify that the foregoing is a full and true copy of the original exhibit, marked "Y," refer'ed to in the foregoing depositions, a copy of which, by agreement of counsel, was to be attached to this deposition in lieu of said original.

Witness my hand this 15th day of June, A. D. 1868.

R. WILCOX,
Commissioner, &c.

"Z."

PORTLAND, OREGON, *August* 15, 1860.

A. C. GIBBS, Esq.,
Agent of L. Stout.

DEAR SIR: I hereby desire you to reconvey to D. H. Lownsdale all the remaining right, title, interest, and estate of said Stout, in and to blocks No. 132, 211, 218, and 235, situated in the city of Portland, in the county of Multnomah, and State of Oregon.

W. H. FARRAR.

Know all men by these presents that I, Lansing Stout, of the city of Portland and Territory of Oregon, in and for the consideration of one thousand and nine hundred dollars to me in hand paid, the receipt whereof is hereby acknowledged, have bargained, sold, and quit-claimed, and by these presents do bargain, sell, release, convey, and quit-claim unto Alonzo Leland, his heirs and assigns, the undivided half of all my

right, title, interest, claim, and demand both at law and in equity, to all those blocks, pieces or parcels of land situated in the said city
97 of Portland, and Territory aforesaid, and known on the plat of said city as blocks numbered one hundred and thirty-two, (132,) one hundred and seventy-two, (172,) two hundred and eleven, (211,) of the recorded plat of the town of Portland; and also, block within the said town site, and on the extension of the plat, numbered two hundred and eighteen, (218,) containing eight lots each, measuring fifty by one hundred feet each, together with all singular the appurtenances thereunto belonging, and by these presents do give him peac'able possession of the same, to have and to hold to his own use and benefit forever.

In testimony whereof I have hereunto set my hand and affixed my seal this first day of April, A. D. one thousand eight hundred and fifty-eight.

LANSING STOUT. [SEAL.]

Attest:
WM DOUTHIT.
JA'S W. DAVIS.

Interlineations and erasures made before signing.

TERRITORY OF OREGON,
Multnomah County, ss:

Be it remembered that, on the 10th day of April, A. D. 1858, personally appeared before me the undersigned, a clerk of the district court for the second judicial district of Oregon, Lansing Stout, to me known to be the person described in and who executed the within conveyance, and acknowledged to me that he executed the same freely and
98 voluntarily, and for the uses and purposes therein mentioned.

In testimony whereof I have hereunto set my hand and affixed the seal of the court on the day and year above written.

Witness Ja's W. Davis, clerk, and the seal of said court affixed on the day and year above written.

[SEAL.] JA'S W. DAVIS, *Clerk.*

TERRITORY OF OREGON,
Multnomah County, ss:

I hereby certify that the within instrument of writing was received for record September twenty-first, and was recorded on page twenty-one (21) of book "B," of the record of deeds in the office of the recorder of Multnomah County, the first day of October, A. D. 1858.

In testimony whereof I have hereunto set my hand and seal of office, at Portland, the day and year last above written.

[SEAL.] D. W. LICHTENTHALER,
Auditor & Recorder.

Known all men that we, Alonzo Leland and Rachel B. Leland, his wife, in consideration of twenty-five hundred dollars, to us paid by
$1 00 stamp cancelled. Lewis M. Starr, do hereby give, grant, bargain, sell, and convey to the said Starr all our right, title, and interest in and to lots numbered three and four, in block numbered one hundred and seventy-two; and lots numbered three, four, five and six, in
99 block numbered two hundred and eleven; and lots numbered one,
$2 00 stamp cancelled. two, three, four, five, six, seven and eight, in block numbered two hundred and eighteen, all of the said lots being

in the city of Portland, in Multnomah County, State of Oregon, and being designated, as above stated, on the plat of said city: To have and to hold to him the said Starr, and his legal representatives forever, with all the privileges and appurtenances thereunto belonging, free from all claim or demand thereon, on the part of either of us, or of any person claiming the same by, through, or under either of us.

$2 00 stamp cancelled.

In witness whereof we have hereto set our hands and seals this fifth day of December, A. D. 1864.

ALONZO LELAND. [SEAL.]
RACHEL B. LELAND. [SEAL.]

In presence of—
ALLECK C. SMITH.
LIZZIE M. LELAND.

IDAHO TERRITORY, *County of Nez Perce', ss:*

Personally appeared the above-named Alonzo Leland and Rachel B. Leland, his wife, known to me to be the individuals described in, and who executed, the foregoing instrument, and severally acknowledged the same to be their free act and deed; and the said Rachel B. Leland, on a private examination made by me, separately and apart from her said husband, declared that she executed the same freely and voluntarily, and without fear or compulsion on the part of any one.

ALLECK C. SMITH,
Associate Justice Supreme Court & Judge
1st Judicial District, Idaho Territory.

Done at Lewiston, Idaho Territory, this 5th day of Dec., A. D. 1864.

100 TERRITORY OF IDAHO,
County of Nez Perces, ss:

I, E. C. Mayhews, clerk of the district court of the first judicial district of said Territory, in and for said county, do hereby certify that Alleck C. Smith, judge of the first judicial district in and for said Territory & County, was, at the date of the taking of the acknowledgement of the foregoing deed, to wit, the fifth day of December, 1864, associate justice in and for said Territory, and judge of the first judicial district in and for said Territory and county, and that full faith and credit ought to be given the official act as such judge.

In testimony whereof I have hereunto set my hand and the seal of said court, at office, Lewiston, this fifth day of December, 1864.

[SEAL.] E. C. MAYHEWS, *Clerk.*

STATE OF OREGON, *Multnomah County, ss:*

I certify that the foregoing deed was received for record on January 20th, 1865, and is recorded in book "E" of deeds, on page 744.

H. C. COULSON, *Co. Clerk.*
By QUINCY A. BROOKS, *Deputy.*

101 Whereas, by virtue of an execution issued from the office of the clerk of the circuit court of the State of Oregon, for Multnomah County, dated January 12, 1863, upon a judgment therein recovered, in favor of Geo. H. Williams et al., against Lansing Stout, I, Robert J. Ladd, sheriff of said county, levied upon, and having given notice thereof, by advertising the same for four weeks

50c. stamp cancelled.

successively in a newpaper published in said county, and posting copies thereof in then public places in said county, sold at public auction, at the court-house, on the 14th February, 1863, the undivided half of lots No. 1 for $90 00; No. 2 for $80 00; No. 3 for $70 00; No. 4 for $115 00; No. 5 for $105 00; No. 6 for $100 00; No. 7 for $80 00; No. 8 for $115 00, all in block No. 218, as described on the plat of the city of Portland, to Lewis M. Starr, he being the highest bidder therefor, and said sums being the highest bid: And whereas no redemption of said property has been made as allowed by law, now, know all men that I, Robert J. Ladd, sheriff as aforesaid, in consideration of the presents, and of the sums so paid to me, do hereby sell and convey to said Starr, the undivided half of said lots above described: To have and to hold to him, his heirs and assigns forever, as fully as by law, in my capacity of sheriff, I am authorised to convey the same.

50c. stamp cancelled.

Witness my hand and seal this 24th Dec., 1863.

R. J. LADD,
Sheriff of Multnomah County.

In presence of—
AMORY HOLBROOK.
W. S. CALDWELL.

102 STATE OF OREGON, *Multnomah Co., ss:*

This 24th Dec., 1863, personally appeared the above-named R. J. Ladd, known to me to be the person described in and who executed the foregoing deed, and who acknowledged that he executed the same for the purposes and in the capacity therein stated.

Before me—

ERASMUS D. SHATTUCK,
Judge Circuit Court.

STATE OF OREGON, *Multnomah Co., ss:*

I certify that the within deed was filed for record Jan. 12, 1864, and recorded in book "D" records of deeds, on page 793.

Witness my hand and official seal this 9th day of Sept., 1864.

H. C. COULSON,
Clerk Multnomah Co., Or'n.

(Endorsed:)
This deed approved in open court this 24th day of Dec., 1863.

ERASMUS D. SHATTUCK,
Judge of the Circuit Court of the State of Oregon for Multnomah County.

103 OREGON.

Donation certificate No. 1022.] [Notification No. 88.

Whereas, in conformity with the provisions of the 7th section of the act of Congress, approved September 27, 1850, entitled "An act to create the office of surveyor general of the public lands in Oregon, and to provide for the survey and to make donations to settlers of the public lands," and amendments thereto, Daniel H. Lownsdale, of the county of Multnomah, Oregon, claiming a donation right, in virtue of the acts aforesaid, to the following tract of public lands known and designated

in the surveys and plats of the United States as the claim No. 40, being part of sections thirty-three and thirty-four in T. 1 N., R. 1 E., and claim No. 66, being parts of sections three and four in T. 1 S., R. 1 E., bounded and described as follows, to wit: Beginning at a point in the west bank of the Willamette River, thirty-seven links S. 4° W. from the intersection of the base line with said west bank of Willamette River; thence N. 70° 15′ W., 52.89 chains; thence N. 89° W., 23.29 chains; thence S. 20° 15′ W., 14.45 chains; thence S. 68° 45′ E., 58.90 chains; thence S. 20° 45′ W., 7.40 chains; thence S. 69° 15′ E., 17.94 chains, to the Willamette River; thence, with the meanders of said river, down stream N. 16° 45′ E., 31.23 chains, to the place of beginning, containing 178 $\frac{02}{100}$ acres—the west half to Nancy Lownsdale, wife of Daniel H. Lownsdale, and the east half to Daniel H. Lownsdale, who, having proven to the satisfaction of the register and receiver of the land office for the "Willamette district," in Oregon Territory, the fact that such settlement was commenced on the twenty-second day of Septem-
104 ber, on' thousaand eight hundred and forty-eight, four years prior to the date hereof, and having, pursuant to the requirements of the acts aforesaid, established by two disinterested witnesses the fact of continued residence and cultivation, required by the 4th section of said act:

Now, therefore, be it known that we, Berryman Jennings, register, and A. Lawrence Lovejoy, receiver of the land office aforesaid, do hereby certify to the Commissioner of the General Land Office the facts aforesaid, accompanied by the evidence thereof, in order that a patent may be issued to said claimant for the tract of land above described; provided the said Commissioner shall find no valid objection thereto.

Given under our hands at the land office, in Oregon City, this 17th day of October, 1860.

(S'd) B. JENNINGS, *Register.*
A. LAWRENCE LOVEJOY, *Receiver.*

LAND OFFICE, *Oregon City, February* 18, 1863.

We hereby certify that the within is a true copy of the original now on file in this office.

In witness whereof we have hereto signed our names and affixed our private seals (this office having no public seal) the day and year aforesaid.

WM A. STARKWEATHER, *Register.* [SEAL.]
WILLIAM T. MATLOCK, *Receiver.* [SEAL.]

105 In the circuit court of the United States for the district of Oregon.

JOHN R. LAMB AND EMMA S. LAMB, HIS WIFE, and Ida Squires, complainants,
vs.
LEWIS M. STARR, JAMES P. O. LOWNSDALE, Millard O. Lownsdale, Ruth A. Lownsdale, Mary E. Cooper, William E. Cooper, Hiram Smith and Hannah Smith, his wife, defendants.

To the hon. the judges of said court:

Your petitioner, the said Lewis M. Starr, represents to the court that on the day of , A. D. 1869, a decree was rendered against

him in the above-entitled suit, setting apart to the above-named complainants and your petitioner's co-defendants certain portions of block No. , in the city of Portland, Oregon; that the property in controversy is of the value of $2,000.

Your petitioner further represents that he has executed and now presents to the court a bond in the penalty of $2,000, conditioned according to law and the *usury* of this *cause* with Isaac A. Davenport as security. Your petitioner also presents herewith a citation to be signed by the presiding judge of this hon. court, admonishing the defendants in appeal to be and appear before the Supreme Court of the United States.

W. W. CHAPMAN,
Att'y for Petitioner.

(Endorsed:) "Filed March 29, 1870. Ralph Wilcox, clerk."

106 Circuit court of the United States, district of Oregon.

LEWIS M. STARR, PLAINTIFF, *vs.* JOHN R. LAMB, EMMA S. LAMB, HIS WIFE, AND Ida Squires, James P. O. Lownsdale, Millard O. Lownsdale, Ruth A. Lownsdale, William E. Cooper, and Mary Cooper, Hiram Smith and Hannah Smith, defendants.	In error on appeal.

Know all men by these presents that we, Lewis M. Starr, the appellant above named, and Isaac A. Davenport, security, are held and firmly bound unto the above-named John R. Lamb, Emma S. Lamb, Ida Squires, James P. O. Lownsdale, Millard O. Lownsdale, Ruth A. Lownsdale, William E. Cooper and Mary Cooper, his wife, Hiram Smith and Hannah, his wife, appellees, in the sum of two thousand dollars; to which payment, well and trully to be made, we bind ourselves and each of us jointly and severally, and our and each of our heirs, executors, and administrators, jointly by these presents, sealed with our seals and dated this 19th day of November, 1869.

Whereas the above-named Lewis M. Starr hath prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in a suit wherein the above-named John R. Lamb, Emma S. Lamb, and Ida Squires were complainants, and the said Lewis M. Starr,
107 James P. O. Lownsdale, Millard O. Lownsdale, Ruth A. Lownsdale, William E. Cooper and Mary Cooper, his wife, Hiram & Hannah Smith were defendands in the said circuit court of the United States for the district of Oregon:

Now, therefore, the condition of this obligation is such, that if the above-named Lewis M. Starr shall prosecute his said appeal to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall remain in full force and virtue.

LEWIS M. STARR. [SEAL.]
I. A. DAVENPORT. [SEAL.]

Sealed and delivered in presence of—
W. W. CHAPMAN.

I hereby approve of the security to the foregoing bond, November 26, 1869.

MATTHEW P. DEADY,
U. S. District Judge, Oregon.

In the circuit court of the United States for the district of Oregon.

We, Lewis M. Starr and Isaac A. Davenport, within named, being duly sworn, do each for himself depose and say that I am a citizen and resident of the State of Oregon, and county of Multnomah, and worth two thousand dollars over and above all liability, and that I am a freeholder in said county.

L. M. STARR.
I. A. DAVENPORT.

Subscribed & sworn to before me this Nov. 19, 1869.
RALPH WILCOX, *Clerk.*

108 (Endorsed:) "Approved November 19, 1869. Ralph Wilcox, clerk."

109 DISTRICT OF OREGON, *ss:*

I, Ralph Wilcox, clerk of the circuit court of the United States for the district of Oregon, hereby certify that the foregoing pages contain a full and complete transcript of the record and proceedings had in the said entitled cause now remaining in my office.

In testimony whereof I have caused the seal of said court to be hereto affixed at Portland, in said district, this sixteenth day of November, in the year eighteen hundred and seventy.

[SEAL.] RALPH WILCOX, *Clerk.*

[5c't int. rev. stamp canceled.]

(Indorsement on cover:) No. 475. Lewis M. Starr, appellant, vs. John R. Lamb, Emma S. Lamb, Ida Squires, & her guardian, W. E. Cooper, James P. O. Lownsdale, et al. Oregon C. C. U. S. Filed 10th January, 1871.